

AN ACT

relating to the continuation and functions of the Texas State Board of Medical Examiners, Texas State Board of Physician Assistant Examiners, and Texas State Board of Acupuncture Examiners and the regulation of health care professions regulated by those state agencies; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF MEDICAL EXAMINERS

SECTION 1.01. Subdivisions (1) and (7), Subsection (a), Section 151.002, Occupations Code, are amended to read as follows:

(1) "Board" means the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

(7) "Medical peer review" or "professional review action" means the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners. The term includes evaluation of the:

(A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;

(B) accuracy of a diagnosis;

(C) quality of the care provided by a health care

1 practitioner;

2 (D) report made to a medical peer review
3 committee concerning activities under the committee's review
4 authority;

5 (E) report made by a medical peer review
6 committee to another committee or to the board as permitted or
7 required by law; and

8 (F) implementation of the duties of a medical
9 peer review committee by a member, agent, or employee of the
10 committee.

11 SECTION 1.02. Section 151.004, Occupations Code, is amended
12 to read as follows:

13 Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical
14 [~~State~~] Board [~~of Medical Examiners~~] is subject to Chapter 325,
15 Government Code (Texas Sunset Act). Unless continued in existence
16 as provided by that chapter, the board is abolished and this
17 subtitle and Chapters 204, 205, and 206 expire [~~expires~~] September
18 1, 2017 [~~2005~~].

19 SECTION 1.03. Section 152.001, Occupations Code, is amended
20 to read as follows:

21 Sec. 152.001. TEXAS MEDICAL [~~STATE~~] BOARD [~~OF MEDICAL~~
22 ~~EXAMINERS~~]. (a) The Texas Medical [~~State~~] Board [~~of Medical~~
23 ~~Examiners~~] is an agency of the executive branch of state government
24 with the power to regulate the practice of medicine.

25 (b) A reference in any other law to the former Texas State
26 Board of Medical Examiners means the Texas Medical Board.

27 SECTION 1.04. Subsection (b), Section 152.003, Occupations

1 Code, is amended to read as follows:

2 (b) A person may not be a public member of the board if the
3 person or the person's spouse [~~may not be~~]:

4 (1) is registered, certified, or licensed by a
5 regulatory agency in the field of health care [~~licensed to practice~~
6 ~~medicine~~];

7 (2) is employed by or participates in the management
8 of a business entity or other [~~financially involved in any~~
9 organization regulated by or receiving money from [~~subject to~~
10 ~~regulation by~~] the board; [~~or~~]

11 (3) owns or controls, directly or indirectly, more
12 than a 10 percent interest in a business entity or other
13 organization regulated by or receiving money from the board;

14 (4) uses or receives a substantial amount of tangible
15 goods, services, or money from the board other than compensation or
16 reimbursement authorized by law for board membership, attendance,
17 or expenses; or

18 (5) is a provider of health care.

19 SECTION 1.05. Subsections (a) through (e), Section 152.004,
20 Occupations Code, are amended to read as follows:

21 (a) In this section, "Texas trade [~~or professional~~]
22 association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily
23 joined association of business or professional competitors in this
24 state designed to assist its members and its industry or profession
25 in dealing with mutual business or professional problems and in
26 promoting their common interest.

27 (b) A person is ineligible for appointment to the board if,

1 at the time of appointment, the person is younger than 18 years of
2 age or is a stockholder~~[, paid full-time faculty member,]~~ or a
3 member of the board of trustees of a medical school.

4 (c) A person may not be a member of the board and may not be a
5 board employee in a "bona fide executive, administrative, or
6 professional capacity," as that phrase is used for purposes of
7 establishing an exemption to the overtime provisions of the federal
8 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
9 if:

10 (1) the person is an ~~[serving as the president, vice~~
11 ~~president, secretary, or treasurer of a statewide or national~~
12 ~~organization incorporated to represent the entire profession~~
13 ~~licensed to practice medicine in this state or the United States,~~
14 ~~including an organization representing the practice of osteopathic~~
15 ~~medicine, or is an employee of such an organization.~~

16 [~~(d) An~~] officer, employee, or paid consultant of a Texas
17 trade ~~[or professional]~~ association in the field of health care or a
18 national organization incorporated to represent the entire
19 profession licensed to practice medicine in this state or the
20 United States, including an organization representing the practice
21 of osteopathic medicine; or

22 (2) the person's ~~[may not be a board member or employee~~
23 ~~who is exempt from the state's position classification plan or is~~
24 ~~compensated at or above the amount prescribed by the General~~
25 ~~Appropriations Act for step 1, salary group A17, of the position~~
26 ~~classification salary schedule.~~

27 [~~(e) A person who is the~~] spouse is ~~[of]~~ an officer,

1 manager, or paid consultant of a Texas trade [~~or professional~~]
2 association in the field of health care [~~may not be a board member~~
3 ~~or employee who is exempt from the state's position classification~~
4 ~~plan or is compensated at or above the amount prescribed by the~~
5 ~~General Appropriations Act for step 1, salary group A17, of the~~
6 ~~position classification salary schedule].~~

7 SECTION 1.06. Subchapter A, Chapter 152, Occupations Code,
8 is amended by adding Section 152.0041 to read as follows:

9 Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board
10 member who is a physician or a physician acting as an agent of the
11 board, including a member of an expert physician panel appointed
12 under Section 154.056(e), may not use information to which the
13 person has access solely by virtue of the person's position as a
14 member or agent of the board for the benefit of the person's
15 practice or for the benefit of another physician or person
16 affiliated with the physician.

17 SECTION 1.07. Subsections (a) and (c), Section 152.006,
18 Occupations Code, are amended to read as follows:

19 (a) It is a ground for removal from the board that a member:

20 (1) does not have at the time of taking office
21 [~~appointment~~] the qualifications required by Section 152.002;

22 (2) does not maintain during service on the board the
23 qualifications required by Section 152.002;

24 (3) is ineligible for membership under Sections
25 152.003 and [~~violates a prohibition established by Section~~]
26 152.004;

27 (4) cannot, because of illness or disability,

1 discharge the member's duties for a substantial part of the member's
2 term; or

3 (5) is absent from more than half of the regularly
4 scheduled board meetings that the member is eligible to attend
5 during a calendar year without an excuse approved by a majority vote
6 of the board.

7 (c) If the executive director has knowledge that a potential
8 ground for removal exists, the executive director shall notify the
9 president of the board of the potential ground. The president shall
10 then notify the governor and the attorney general that a potential
11 ground for removal exists. If the potential ground for removal
12 involves the president of the board, the executive director shall
13 notify the next highest ranking officer of the board, who shall then
14 notify the governor and the attorney general that a potential
15 ground for removal exists.

16 SECTION 1.08. Section 152.008, Occupations Code, is amended
17 to read as follows:

18 Sec. 152.008. OFFICERS. Not later than December after each
19 regular session of the legislature, the governor shall appoint from
20 the members of the board a president, to serve in that capacity at
21 the pleasure of the governor, and the board shall elect from its
22 members a vice president, secretary-treasurer, and other officers
23 as are required, in the board's opinion, to carry out the board's
24 duties.

25 SECTION 1.09. Subsections (a), (b), and (c), Section
26 152.010, Occupations Code, are amended to read as follows:

27 (a) A person who is appointed to and qualifies for office as

1 a member of the board may not vote, deliberate, or be counted as a
2 member in attendance at a meeting of the board until the person
3 completes [~~Before a board member may assume the member's duties and~~
4 ~~before the member may be confirmed by the senate, the member must~~
5 ~~complete at least one course of~~] a training program that complies
6 with [~~established by the board under~~] this section.

7 (b) The training program must [~~shall~~] provide the person
8 with information [~~to a participant~~] regarding:

- 9 (1) this subtitle;
- 10 (2) the programs operated by the board;
- 11 (3) the role and functions of the board;
- 12 (4) the rules of the board, with an emphasis on the
13 rules that relate to disciplinary and investigatory authority;
- 14 (5) the current budget for the board;
- 15 (6) the results of the most recent formal audit of the
16 board;
- 17 (7) the requirements of laws relating to open
18 meetings, public information, administrative procedure, and
19 conflicts of interest [~~Chapters 551, 552, 2001, and 2002,~~
20 ~~Government Code~~]; and

21 (8) [~~the requirements of the conflict of interest laws~~
22 ~~and other laws relating to public officials, and~~

23 [~~9~~] any applicable ethics policies adopted by the
24 board or the Texas Ethics Commission.

25 (c) A person appointed to the board is entitled to
26 reimbursement, as provided by the General Appropriations Act, for
27 the travel expenses incurred in attending the training program

1 regardless of whether the attendance at the program occurs before
2 or after the person qualifies for office [~~In developing the~~
3 ~~training program, the board shall consult with the governor, the~~
4 ~~attorney general, and the Texas Ethics Commission~~].

5 SECTION 1.10. Section 152.056, Occupations Code, is amended
6 to read as follows:

7 Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board
8 shall develop and implement policies that clearly separate [~~define~~]
9 the policy-making [~~respective~~] responsibilities of the board and
10 the management responsibilities of the executive director and the
11 staff of the board.

12 SECTION 1.11. Subchapter A, Chapter 153, Occupations Code,
13 is amended by adding Section 153.0015 to read as follows:

14 Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING.

15 (a) The board shall adopt guidelines to establish procedures for
16 receiving input during the rulemaking process from individuals and
17 groups that have an interest in matters under the board's
18 jurisdiction, including input from the Texas Physician Assistant
19 Board and the Texas State Board of Acupuncture Examiners. The
20 guidelines must provide an opportunity for those individuals and
21 groups to provide input before the board provides notice of the
22 proposed rule under Section 2001.023, Government Code.

23 (b) The guidelines adopted under this section shall also
24 include procedures for the board to receive comments on rules
25 recommended by the physician assistant board or acupuncture board
26 for adoption by the board.

27 (c) A rule adopted by the board may not be challenged on the

1 grounds that the board did not comply with this section. If the
2 board was unable to solicit a significant amount of input from the
3 public or affected persons early in the rulemaking process, the
4 board shall state in writing the reasons why the board was unable to
5 do so.

6 SECTION 1.12. Subchapter A, Chapter 153, Occupations Code,
7 is amended by adding Section 153.0045 to read as follows:

8 Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL
9 CONVICTION. The board shall adopt rules and guidelines as
10 necessary to comply with Chapter 53, except to the extent the
11 requirements of this subtitle are stricter than the requirements of
12 that chapter.

13 SECTION 1.13. Subchapter B, Chapter 153, Occupations Code,
14 is amended by adding Sections 153.057 and 153.058 to read as
15 follows:

16 Sec. 153.057. USE OF TECHNOLOGY. The board shall implement
17 a policy requiring the board to use appropriate technological
18 solutions to improve the board's ability to perform its functions.
19 The policy must ensure that the public is able to interact with the
20 board on the Internet.

21 Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE
22 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
23 implement a policy to encourage the use of:

24 (1) negotiated rulemaking procedures under Chapter
25 2008, Government Code, for the adoption of board rules; and

26 (2) appropriate alternative dispute resolution
27 procedures under Chapter 2009, Government Code, to assist in the

1 resolution of internal and external disputes under the board's
2 jurisdiction.

3 (b) The board's procedures relating to alternative dispute
4 resolution must conform, to the extent possible, to any model
5 guidelines issued by the State Office of Administrative Hearings
6 for the use of alternative dispute resolution by state agencies.

7 (c) The board shall designate a trained person to:

8 (1) coordinate the implementation of the policy
9 adopted under Subsection (a);

10 (2) serve as a resource for any training needed to
11 implement the procedures for negotiated rulemaking or alternative
12 dispute resolution; and

13 (3) collect data concerning the effectiveness of those
14 procedures, as implemented by the board.

15 SECTION 1.14. Section 154.003, Occupations Code, is amended
16 by adding Subsection (d) to read as follows:

17 (d) Except as provided by this subsection, the board shall
18 publish information regarding errors in and reversals of
19 disciplinary actions taken by the board. The information to be
20 published under this subsection includes instances in which a
21 disciplinary action initiated by the board is overturned by a
22 court. The board shall disseminate the information under this
23 subsection in the same format, size, style, and manner as the
24 information regarding the original action by the board was
25 disseminated. The board may not publish information under this
26 subsection if the physician who was the subject of the disciplinary
27 action requests that the information not be published.

1 SECTION 1.15. Section 154.052, Occupations Code, is amended
2 to read as follows:

3 Sec. 154.052. RECORDS OF COMPLAINTS. The board shall
4 maintain a system to promptly and efficiently act on complaints
5 filed with the board. The board shall maintain [~~keep an~~]
6 information [~~file~~] about [~~each complaint filed with the board. The~~
7 ~~information file must be kept current and contain a record for each~~
8 ~~complaint of~~]:

9 (1) the parties to the complaint;

10 (2) the subject matter of the complaint;

11 (3) a summary of the results of the review or
12 investigation of the complaint; and

13 (4) the disposition of the complaint [~~each potential~~
14 ~~witness contacted in relation to the complaint;~~

15 [~~(2) a summary of findings made at each step of the~~
16 ~~complaint process;~~

17 [~~(3) an explanation of the legal basis and reason for~~
18 ~~the dismissal of a complaint;~~

19 [~~(4) the schedule for the disposition of the complaint~~
20 ~~prepared as required under Section 154.056 and a notation of any~~
21 ~~change in the schedule; and~~

22 [~~(5) other relevant information].~~

23 SECTION 1.16. Subsection (c), Section 154.053, Occupations
24 Code, is amended to read as follows:

25 (c) The board shall periodically [~~If a written complaint is~~
26 ~~filed with the board that the board has authority to resolve, the~~
27 ~~board, at least as frequently as quarterly and until final~~

1 ~~disposition of the complaint, shall]~~ notify the parties to the
2 complaint of the status of the complaint until final disposition
3 unless the notice would jeopardize an investigation.

4 SECTION 1.17. Subsection (e), Section 154.056, Occupations
5 Code, is amended to read as follows:

6 (e) The board by rule shall provide for an expert physician
7 panel appointed by the board to assist with complaints and
8 investigations relating to medical competency by acting as expert
9 physician reviewers. Each member of the [an] expert physician
10 panel must be licensed to practice medicine in this state. The
11 rules adopted under this subsection must include provisions
12 governing the composition of the panel, qualifications for
13 membership on the panel, length of time a member may serve on the
14 panel, grounds for removal from the panel, the avoidance of
15 conflicts of interest, including situations in which the affected
16 physician and the panel member live or work in the same geographical
17 area or are competitors, and the duties to be performed by the
18 panel. The board's rules governing grounds for removal from the
19 panel must include providing for the removal of a panel member who
20 is repeatedly delinquent in reviewing complaints and in submitting
21 reports to the board. The board's rules governing appointment of
22 expert physician panel members to act as expert physician reviewers
23 must include a requirement that the board randomly select, to the
24 extent permitted by Section 154.058(b) and the conflict of interest
25 provisions adopted under this subsection, panel members to review a
26 complaint.

27 SECTION 1.18. Subchapter B, Chapter 154, Occupations Code,

1 is amended by adding Section 154.0561 to read as follows:

2 Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW.

3 (a) A physician on the expert physician panel authorized by
4 Section 154.056(e) who is selected to review a complaint shall:

5 (1) determine whether the physician who is the subject
6 of the complaint has violated the standard of care applicable to the
7 circumstances; and

8 (2) issue a preliminary written report of that
9 determination.

10 (b) A second expert physician reviewer shall review the
11 first physician's preliminary report and other information
12 associated with the complaint. If the second expert physician
13 agrees with the first expert physician, the first physician shall
14 issue a final written report on the matter.

15 (c) If the second expert physician does not agree with the
16 conclusions of the first expert physician, a third expert physician
17 reviewer shall review the preliminary report and information and
18 decide between the conclusions reached by the first two expert
19 physicians. The final written report shall be issued by the third
20 physician or the physician with whom the third physician concurs.

21 (d) In reviewing a complaint, the expert physician
22 reviewers assigned to examine the complaint may consult and
23 communicate with each other about the complaint in formulating
24 their opinions and reports.

25 SECTION 1.19. Subsection (b), Section 154.057, Occupations
26 Code, is amended to read as follows:

27 (b) The board shall complete [~~make~~] a preliminary

1 investigation of the complaint not later than the 30th day after the
2 date of receiving the complaint. The board shall first determine
3 whether the physician constitutes a continuing threat to the public
4 welfare. On completion of the preliminary investigation, the board
5 shall determine whether to officially proceed on the complaint. If
6 the board fails to complete the preliminary investigation in the
7 time required by this subsection, the board's official
8 investigation of the complaint is considered to commence on that
9 date.

10 SECTION 1.20. Section 155.002, Occupations Code, is amended
11 to read as follows:

12 Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its
13 sole discretion, may issue a license to practice medicine to a
14 person who:

15 (1) submits to the board a license application as
16 required by this chapter;

17 (2) presents satisfactory proof that the person meets
18 the eligibility requirements established by this chapter; and

19 (3) satisfies the examination requirements of Section
20 155.051.

21 (b) The board may delegate authority to board employees to
22 issue licenses under this subtitle to applicants who clearly meet
23 all licensing requirements. If the board employees determine that
24 the applicant does not clearly meet all licensing requirements, the
25 application shall be returned to the board. A license issued under
26 this subsection does not require formal board approval.

27 SECTION 1.21. Subsection (a), Section 155.003, Occupations

1 Code, is amended to read as follows:

2 (a) To be eligible for a license under this chapter, an
3 applicant must present proof satisfactory to the board that the
4 applicant:

5 (1) is at least 21 years of age;

6 (2) is of good professional character and has not
7 violated Section 164.051, 164.052, or 164.053;

8 (3) has completed:

9 (A) at least 60 semester hours of college
10 courses, other than courses in medical school, that are acceptable
11 to The University of Texas at Austin for credit on a bachelor of
12 arts degree or a bachelor of science degree;

13 (B) the entire primary, secondary, and
14 premedical education required in the country of medical school
15 graduation, if the medical school is located outside the United
16 States or Canada; or

17 (C) substantially equivalent courses as
18 determined by board rule;

19 (4) is a graduate of a medical school located in the
20 United States or Canada and approved by the board;

21 (5) has either:

22 (A) successfully completed one year of graduate
23 medical training approved by the board in the United States or
24 Canada; or

25 (B) graduated from a medical school located
26 outside the United States or Canada and has successfully completed
27 three years of graduate medical training approved by the board in

1 the United States or Canada;

2 (6) has passed [~~within three attempts~~] an examination
3 accepted or administered by the board[~~, except as provided by~~
4 ~~Section 155.056~~]; and

5 (7) has passed a Texas medical jurisprudence
6 examination as determined by board rule.

7 SECTION 1.22. Subchapter A, Chapter 155, Occupations Code,
8 is amended by adding Section 155.006 to read as follows:

9 Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board
10 may adopt rules and prescribe fees related to the issuance of a
11 license under this section that is limited in scope to an applicant
12 by virtue of the applicant's conceded eminence and authority in the
13 applicant's specialty.

14 (b) An applicant is eligible for a limited license under
15 this section on presenting proof satisfactory to the board that the
16 applicant:

17 (1) is recommended to the board by the dean,
18 president, or chief academic officer of:

19 (A) a school of medicine in this state;

20 (B) The University of Texas Health Center at
21 Tyler;

22 (C) The University of Texas M. D. Anderson Cancer
23 Center; or

24 (D) a program of graduate medical education,
25 accredited by the Accreditation Council for Graduate Medical
26 Education or the American Osteopathic Association, that exceeds the
27 requirements for eligibility for first board certification in the

1 discipline;

2 (2) is expected to receive an appointment at the
3 institution or program making the recommendation under Subdivision
4 (1);

5 (3) has not failed a licensing examination that would
6 prevent the applicant from obtaining a full license not limited in
7 scope in this state;

8 (4) has passed a Texas medical jurisprudence
9 examination as determined by board rule;

10 (5) has successfully completed at least one year of
11 approved subspecialty training accredited by the Accreditation
12 Council for Graduate Medical Education or the American Osteopathic
13 Association;

14 (6) is of good professional character, is not subject
15 to denial of a license under Section 164.051, and has not engaged in
16 conduct described by Section 164.052 or 164.053; and

17 (7) meets any other requirements prescribed by board
18 rule adopted under this section.

19 (c) In adopting rules under this section, the board may
20 adopt rules that prescribe additional qualifications for an
21 applicant, including education and examination requirements,
22 conditions of employment, and application procedures. The board by
23 rule may qualify, restrict, or otherwise limit a license issued
24 under this section.

25 (d) The board by rule may define "conceded eminence and
26 authority in the applicant's specialty." In adopting rules under
27 this subsection, the board shall consider criteria that include a

1 person's:

- 2 (1) academic appointments;
- 3 (2) length of time in a profession;
- 4 (3) scholarly publications; and
- 5 (4) professional accomplishments.

6 (e) The board may require that the holder of a license under
7 this section serve a six-month probationary period during which
8 medical services provided by the license holder are supervised by
9 another licensed physician.

10 (f) The holder of a license under this section shall be
11 limited to the practice of only a specialty of medicine for which
12 the license holder has trained and qualified, as determined by the
13 board. The license holder may not practice medicine outside of the
14 setting of the institution or program that recommended the license
15 holder under Subsection (b)(1).

16 (g) The holder of a license under this section may not
17 change the license holder's practice setting to a new institution
18 or program unless the license holder applies for a new license under
19 this section with the recommendation of that institution or program
20 as required by Subsection (b)(1).

21 (h) A license holder under this section may obtain a full
22 license not limited in scope to practice medicine in this state by
23 meeting all applicable eligibility requirements for that license.

24 SECTION 1.23. Subchapter A, Chapter 155, Occupations Code,
25 is amended by adding Section 155.009 to read as follows:

26 Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF
27 ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the

1 issuance of a license that limits the license holder to the practice
2 of administrative medicine. The board's rules under this section
3 must include provisions for eligibility for the license, issuance
4 and renewal of the license, the fees applicable to the license,
5 continuing education requirements, and the scope of practice of a
6 person who holds the license.

7 (b) An applicant for a license under this section must meet
8 all of the requirements for issuance of a license under Section
9 155.002.

10 (c) A license holder under this section who seeks to
11 practice medicine under an unrestricted license that is not limited
12 to the practice of administrative medicine must provide proof to
13 the board that the license holder has the clinical competence to
14 practice medicine under that license and must meet all applicable
15 eligibility requirements for that license. The board may require
16 the license holder to pass any examination the board determines
17 necessary.

18 SECTION 1.24. Section 155.056, Occupations Code, is amended
19 to read as follows:

20 Sec. 155.056. EXAMINATION ATTEMPT LIMITS [~~REEXAMINATION~~].

21 (a) An applicant must pass each part of an examination within
22 three attempts [~~, except that an applicant who has passed all but one~~
23 ~~part of an examination within three attempts may take the remaining~~
24 ~~part of the examination one additional time].~~

25 (b) The board shall adopt rules that prescribe how the limit
26 on the number of examination attempts under Subsection (a) shall
27 apply to an applicant who seeks a license and who attempts more than

1 one type of examination [~~Notwithstanding Subsection (a), an~~
2 ~~applicant is considered to have satisfied the requirements of this~~
3 ~~section if the applicant:~~

4 [~~(1) passed all but one part of an examination~~
5 ~~approved by the board within three attempts and passed the~~
6 ~~remaining part of the examination within five attempts;~~

7 [~~(2) is specialty board certified by a specialty board~~
8 ~~that:~~

9 [~~(A) is a member of the American Board of Medical~~
10 ~~Specialties; or~~

11 [~~(B) is approved by the American Osteopathic~~
12 ~~Association; and~~

13 [~~(3) completed in this state an additional two years~~
14 ~~of postgraduate medical training approved by the board].~~

15 SECTION 1.25. Section 155.104, Occupations Code, is amended
16 to read as follows:

17 Sec. 155.104. TEMPORARY LICENSES. (a) The board may
18 adopt rules and set fees relating to granting temporary licenses
19 and extending the expiration dates of temporary licenses. The
20 board by rule shall set a time limit for the term of a temporary
21 license.

22 (b) The board may issue a faculty temporary license to
23 practice medicine to a physician appointed by a medical school in
24 this state as provided by this section. The physician:

25 (1) must hold a current medical license that is
26 unrestricted and not subject to a disciplinary order or probation
27 in another state or Canadian province or have completed at least

1 three years of postgraduate residency;

2 (2) may not hold a medical license in another state or
3 a Canadian province that has any restrictions, disciplinary orders,
4 or probation;

5 (3) must pass the Texas medical jurisprudence
6 examination; and

7 (4) must hold a salaried faculty position of at least
8 the level of assistant professor and be working full-time at one of
9 the following institutions:

10 (A) The University of Texas Medical Branch at
11 Galveston;

12 (B) The University of Texas Southwestern Medical
13 Center at Dallas;

14 (C) The University of Texas Health Science Center
15 at Houston;

16 (D) The University of Texas Health Science Center
17 at San Antonio;

18 (E) The University of Texas Health Center at
19 Tyler;

20 (F) The University of Texas M. D. Anderson Cancer
21 Center;

22 (G) Texas A&M University College of Medicine;

23 (H) Texas Tech University School of Medicine;

24 (I) Baylor College of Medicine; or

25 (J) the University of North Texas Health Science
26 Center at Fort Worth.

27 (c) A physician is eligible for a temporary license under

1 Subsection (b) if the physician holds a faculty position of at least
2 the level of assistant professor and works at least part-time at an
3 institution listed in Subsection (b)(4) and:

4 (1) the physician is on active duty in the United
5 States armed forces; and

6 (2) the physician's practice under the temporary
7 license will fulfill critical needs of the citizens of this state.

8 (d) A physician who is issued a temporary license under
9 Subsection (b) must sign an oath on a form prescribed by the board
10 swearing that the physician:

11 (1) has read and is familiar with this subtitle and
12 board rules;

13 (2) will abide by the requirements of this subtitle
14 and board rules while practicing under the physician's temporary
15 license; and

16 (3) will be subject to the disciplinary procedures of
17 the board.

18 (e) A physician holding a temporary license under
19 Subsection (b) and the physician's medical school must file
20 affidavits with the board affirming acceptance of the terms and
21 limits imposed by the board on the medical activities of the
22 physician.

23 (f) A temporary license issued under Subsection (b) is valid
24 for one year.

25 (g) The holder of a temporary license issued under
26 Subsection (b) is limited to the teaching confines of the applying
27 medical school as a part of the physician's duties and

1 responsibilities assigned by the school and may not practice
2 medicine outside of the setting of the medical school or an
3 affiliate of the medical school. The physician may participate in
4 the full activities of the department of any hospital for which the
5 physician's medical school has full responsibility for clinical,
6 patient care, and teaching activities.

7 (h) The application for a temporary license under
8 Subsection (b) must be made by the chairman of the department of the
9 medical school in which the physician teaches and must contain the
10 information and documentation requested by the department. The
11 application must be endorsed by the dean of the medical school or
12 the president of the institution.

13 (i) Three years in a teaching faculty position at an
14 institution listed in Subsection (b)(4) may be treated as
15 equivalent to three years of an approved postgraduate residency
16 program if, at the conclusion of the three-year period, the
17 physician presents recommendations on the physician's behalf from
18 the chief administrative officer and the president of the
19 institution.

20 (j) A physician who holds a temporary license issued under
21 Subsection (b) and who wishes to receive a permanent unrestricted
22 license must meet the requirements for issuance of a permanent
23 unrestricted license, including any examination requirements.

24 SECTION 1.26. Subsection (a), Section 156.001, Occupations
25 Code, is amended to read as follows:

26 (a) Each person licensed to practice medicine in this state
27 must register with the board every two years. The initial

1 registration permit shall be issued with the license [~~and expires~~
2 ~~on the last day of the birth month of the license holder~~]. The board
3 by rule may adopt a system under which licenses expire on various
4 dates during the year.

5 SECTION 1.27. Subdivision (2), Section 157.051,
6 Occupations Code, is amended to read as follows:

7 (2) "Carrying out or signing a prescription drug
8 order" means completing a prescription drug order presigned by the
9 delegating physician, or the signing of a prescription by a
10 registered nurse or physician assistant [~~after that person has been~~
11 ~~designated to the board by the delegating physician as a person~~
12 ~~delegated to sign a prescription~~].

13 SECTION 1.28. Section 157.0511, Occupations Code, is
14 amended by adding Subsection (b-1) to read as follows:

15 (b-1) The board shall adopt rules that require a physician
16 who delegates the carrying out or signing of a prescription drug
17 order under this subchapter to maintain records that show when and
18 to whom a delegation is made. The board may access the physician's
19 records under this subsection as necessary for an investigation.

20 SECTION 1.29. Section 160.006, Occupations Code, is amended
21 by amending Subsections (a) and (c) and adding Subsections (d) and
22 (e) to read as follows:

23 (a) A record, report, or other information received and
24 maintained by the board under this subchapter or Subchapter B,
25 including any material received or developed by the board during an
26 investigation or hearing and the identity of, and reports made by, a
27 physician performing or supervising compliance monitoring for the

1 board, is confidential. The board may disclose this information
2 only:

3 (1) in a disciplinary hearing before the board or
4 State Office of Administrative Hearings or in a subsequent trial or
5 appeal of a board action or order;

6 (2) to the physician licensing or disciplinary
7 authority of another jurisdiction, to a local, state, or national
8 professional medical society or association, or to a medical peer
9 review committee located inside or outside this state that is
10 concerned with granting, limiting, or denying a physician hospital
11 privileges;

12 (3) under a court order;

13 (4) to qualified personnel for bona fide research or
14 educational purposes, if personally identifiable information
15 relating to any physician or other individual is first deleted; or

16 (5) to the Texas Workers' Compensation Commission as
17 provided by Section 413.0514, Labor Code.

18 (c) A record or report disclosed by the board under this
19 subchapter, ~~and~~ a record or report received, maintained, or
20 developed by the board, a medical peer review committee, a member of
21 the committee, or a health care entity, and a record or report
22 received or maintained by the State Office of Administrative
23 Hearings under this subchapter are not available for discovery or
24 court subpoena and may not be introduced into evidence in any action
25 for damages, including a medical professional liability action that
26 arises out of the provision of or failure to provide a medical or
27 health care service.

1 (d) Medical peer review documents remain confidential at
2 the board and at the State Office of Administrative Hearings. If
3 medical peer review documents are admitted into evidence for any
4 purpose at a proceeding before the State Office of Administrative
5 Hearings, the documents must be admitted under seal to protect the
6 confidentiality of the records as provided by this section and
7 Section 160.007. In the event that a decision of the board or the
8 State Office of Administrative Hearings is appealed to district
9 court or other court, the confidentiality protections relating to
10 the medical peer review committee documents shall continue.

11 (e) The confidentiality requirements of this section do not
12 apply to records used by a medical peer review committee, including
13 a patient's medical records or records made or maintained in the
14 regular course of business, if the records are not considered
15 confidential under this chapter or any other law and are otherwise
16 available to the board.

17 SECTION 1.30. Section 160.010, Occupations Code, is amended
18 by adding Subsection (e) to read as follows:

19 (e) A member of an expert panel under Section 154.056(e) and
20 a person serving as a consultant to the board are immune from suit
21 and judgment and may not be subjected to a suit for damages for any
22 investigation, report, recommendation, statement, evaluation,
23 finding, or other action taken without fraud or malice in the course
24 of performing the person's duties in evaluating a medical
25 competency case. The attorney general shall represent a member of
26 an expert panel or consultant in any suit resulting from a duty
27 provided by the person in good faith to the board.

1 SECTION 1.31. Section 162.103, Occupations Code, is amended
2 to read as follows:

3 Sec. 162.103. APPLICABILITY. Rules adopted by the board
4 under this subchapter do not apply to:

5 (1) an outpatient setting in which only local
6 anesthesia, peripheral nerve blocks, or both are used;

7 (2) ~~[an outpatient setting in which only anxiolytics
8 and analgesics are used and only in doses that do not have the
9 probability of placing the patient at risk for loss of the patient's
10 life-preserving protective reflexes;~~

11 ~~[(3)]~~ a licensed hospital, including an outpatient
12 facility of the hospital that is located separate from the
13 hospital;

14 (3) ~~[(4)]~~ a licensed ambulatory surgical center;

15 (4) ~~[(5)]~~ a clinic located on land recognized as
16 tribal land by the federal government and maintained or operated by
17 a federally recognized Indian tribe or tribal organization as
18 listed by the United States secretary of the interior under 25
19 U.S.C. Section 479a-1 or as listed under a successor federal
20 statute or regulation;

21 (5) ~~[(6)]~~ a facility maintained or operated by a state
22 or local governmental entity;

23 (6) ~~[(7)]~~ a clinic directly maintained or operated by
24 the United States; or

25 (7) ~~[(8)]~~ an outpatient setting accredited by:

26 (A) the Joint Commission on Accreditation of
27 Healthcare Organizations relating to ambulatory surgical centers;

1 (B) the American Association for the
2 Accreditation of Ambulatory Surgery Facilities; or

3 (C) the Accreditation Association for Ambulatory
4 Health Care.

5 SECTION 1.32. Subsections (a) and (f), Section 163.003,
6 Occupations Code, are amended to read as follows:

7 (a) A committee consists of seven [~~five~~] members appointed
8 by the governor, as follows:

9 (1) three physician members who are doctors of
10 medicine (M.D.);

11 (2) one physician member who is a doctor of
12 osteopathic medicine (D.O.); and

13 (3) three [~~one~~] public members [~~member~~].

14 (f) A member of a committee is subject to law and the rules
15 of the board, including Sections 152.004, 152.006, and 152.010, as
16 if the committee member were a member of the board, except that a
17 committee member is not subject to Chapter 572, Government Code.
18 The training program a committee member must complete under Section
19 152.010 shall be an abbreviated version of the program under that
20 section that is limited to training relevant to serving on a
21 committee.

22 SECTION 1.33. Chapter 163, Occupations Code, is amended by
23 adding Section 163.0045 to read as follows:

24 Sec. 163.0045. ASSISTANCE TO BOARD. The board may request
25 members of a committee to participate in an informal meeting under
26 Section 164.003. A physician committee member who participates in
27 an informal meeting on a complaint relating to medical competency

1 must have the qualifications of a member of an expert panel under
2 Section 154.056(e).

3 SECTION 1.34. Section 164.001, Occupations Code, is amended
4 by adding Subsection (j) to read as follows:

5 (j) In determining the appropriate disciplinary action,
6 including the amount of any administrative penalty to impose, the
7 board shall consider whether the violation relates directly to
8 patient care or involves only an administrative violation.

9 SECTION 1.35. Section 164.002, Occupations Code, is amended
10 by adding Subsection (e) to read as follows:

11 (e) The board may not dismiss a complaint solely on the
12 grounds that the case has not been scheduled for an informal meeting
13 within the time required by Section 164.003(b).

14 SECTION 1.36. Subchapter A, Chapter 164, Occupations Code,
15 is amended by adding Section 164.0025 to read as follows:

16 Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT
17 DISPOSITIONS. (a) The board may delegate to a committee of board
18 employees the authority to dismiss or enter into an agreed
19 settlement of a complaint that does not relate directly to patient
20 care or that involves only administrative violations. The
21 disposition determined by the committee must be approved by the
22 board at a public meeting.

23 (b) A complaint delegated under this section shall be
24 referred for informal proceedings under Section 164.003 if:

25 (1) the committee of employees determines that the
26 complaint should not be dismissed or settled;

27 (2) the committee is unable to reach an agreed

1 settlement; or

2 (3) the affected physician requests that the complaint
3 be referred for informal proceedings.

4 SECTION 1.37. Section 164.003, Occupations Code, is amended
5 by amending Subsection (b) and adding Subsections (f), (g), and (h)
6 to read as follows:

7 (b) Rules adopted under this section must require that:

8 (1) an informal meeting in compliance with Section
9 2001.054, Government Code, be scheduled not later than the 180th
10 day after the date the board's official investigation of the
11 complaint is commenced as provided by [~~filed with the board under~~]
12 Section 154.057(b) [~~154.051~~], unless good cause is shown by the
13 board for scheduling the informal meeting after that date;

14 (2) the board give notice to the license holder of the
15 time and place of the meeting not later than the 30th day before the
16 date the meeting is held;

17 (3) the complainant and the license holder be provided
18 an opportunity to be heard;

19 (4) at least one of the board members or district
20 review committee members participating in the informal meeting as a
21 panelist be a member who represents the public;

22 (5) the board's legal counsel or a representative of
23 the attorney general be present to advise the board or the board's
24 staff; and

25 (6) [~~5~~] a member of the board's staff be at the
26 meeting to present to the board's representative the facts the
27 staff reasonably believes it could prove by competent evidence or

1 qualified witnesses at a hearing.

2 (f) The notice required by Subsection (b)(2) must be
3 accompanied by a written statement of the nature of the allegations
4 and the information the board intends to use at the meeting. If the
5 board does not provide the statement or information at that time,
6 the license holder may use that failure as grounds for rescheduling
7 the informal meeting. If the complaint includes an allegation that
8 the license holder has violated the standard of care, the notice
9 must include a copy of the report by the expert physician reviewer.
10 The license holder must provide to the board the license holder's
11 rebuttal at least five business days before the date of the meeting
12 in order for the information to be considered at the meeting.

13 (g) The board by rule shall define circumstances
14 constituting good cause for purposes of Subsection (b)(1),
15 including the extended illness of a board investigator and an
16 expert physician reviewer's delinquency in reviewing and
17 submitting a report to the board.

18 (h) Section 164.007(c) applies to the board's investigation
19 file used in an informal meeting under this section.

20 SECTION 1.38. Subchapter A, Chapter 164, Occupations Code,
21 is amended by adding Sections 164.0031 and 164.0032 to read as
22 follows:

23 Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL
24 PROCEEDINGS. (a) In an informal meeting under Section 164.003 or
25 an informal hearing under Section 164.103, at least two panelists
26 shall be appointed to determine whether an informal disposition is
27 appropriate. At least one of the panelists must be a physician.

1 (b) Notwithstanding Subsection (a) and Section
2 164.003(b)(4), an informal proceeding may be conducted by one
3 panelist if the affected physician waives the requirement that at
4 least two panelists conduct the informal proceeding. If the
5 physician waives that requirement, the panelist may be either a
6 physician or a member who represents the public.

7 (c) The panel requirements described by Subsection (a) do
8 not apply to an informal proceeding conducted by the board under
9 Section 164.003 to show compliance with an order of the board.

10 Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
11 IN INFORMAL PROCEEDINGS. (a) A board member or district review
12 committee member that serves as a panelist at an informal meeting
13 under Section 164.003 shall make recommendations for the
14 disposition of a complaint or allegation. The member may request
15 the assistance of a board employee at any time.

16 (b) Board employees shall present a summary of the
17 allegations against the affected physician and of the facts
18 pertaining to the allegation that the employees reasonably believe
19 may be proven by competent evidence at a formal hearing.

20 (c) A board attorney shall act as counsel to the panel and,
21 notwithstanding Subsection (e), shall be present during the
22 informal meeting and the panel's deliberations to advise the panel
23 on legal issues that arise during the proceeding. The attorney may
24 ask questions of participants in the informal meeting to clarify
25 any statement made by the participant. The attorney shall provide
26 to the panel a historical perspective on comparable cases that have
27 appeared before the board, keep the proceedings focused on the case

1 being discussed, and ensure that the board's employees and the
2 affected physician have an opportunity to present information
3 related to the case. During the panel's deliberations, the
4 attorney may be present only to advise the panel on legal issues and
5 to provide information on comparable cases that have appeared
6 before the board.

7 (d) The panel and board employees shall provide an
8 opportunity for the affected physician and the physician's
9 authorized representative to reply to the board employees'
10 presentation and to present oral and written statements and facts
11 that the physician and representative reasonably believe could be
12 proven by competent evidence at a formal hearing.

13 (e) An employee of the board who participated in the
14 presentation of the allegation or information gathered in the
15 investigation of the complaint, the affected physician, the
16 physician's authorized representative, the complainant, the
17 witnesses, and members of the public may not be present during the
18 deliberations of the panel. Only the members of the panel and the
19 board attorney serving as counsel to the panel may be present during
20 the deliberations.

21 (f) The panel shall recommend the dismissal of the complaint
22 or allegations or, if the panel determines that the affected
23 physician has violated a statute or board rule, the panel may
24 recommend board action and terms for an informal settlement of the
25 case.

26 (g) The panel's recommendations under Subsection (f) must
27 be made in a written order and presented to the affected physician

1 and the physician's authorized representative. The physician may
2 accept the proposed settlement within the time established by the
3 panel at the informal meeting. If the physician rejects the
4 proposed settlement or does not act within the required time, the
5 board may proceed with the filing of a formal complaint with the
6 State Office of Administrative Hearings.

7 (h) If the board rejects the panel's recommendation for
8 settlement or dismissal, the board shall notify the physician and
9 state in the board's minutes the reason for rejecting the
10 recommendation and specify further action to be considered. In
11 determining the appropriate further action to be taken, the board
12 shall consider previous attempts to resolve the matter.

13 SECTION 1.39. Subchapter A, Chapter 164, Occupations Code,
14 is amended by adding Section 164.0036 to read as follows:

15 Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS.

16 (a) If an informal meeting is not scheduled for a complaint before
17 the 180th day after the date the board's official investigation of
18 the complaint is commenced under Section 154.057(b), the board
19 shall provide notice to all parties to the complaint. The notice
20 must include an explanation of the reason why the informal meeting
21 has not been scheduled. The notice under this subsection is not
22 required if the notice would jeopardize an investigation.

23 (b) The board must include in its annual report to the
24 legislature information about any complaint for which notice is
25 required under Subsection (a), including the reason for failing to
26 schedule the informal meeting before the 180-day deadline. The
27 information provided under this subsection must also list any

1 complaint in which the investigation has extended beyond the first
2 anniversary of the date the complaint was filed with the board.

3 SECTION 1.40. Section 164.007, Occupations Code, is amended
4 by adding Subsection (a-1) to read as follows:

5 (a-1) The board may change a finding of fact or conclusion
6 of law or vacate or modify an order of the administrative law judge
7 only if the board makes a determination required by Section
8 2001.058(e), Government Code.

9 SECTION 1.41. Subchapter A, Chapter 164, Occupations Code,
10 is amended by adding Section 164.0071 to read as follows:

11 Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a
12 formal hearing described by Section 164.007 in which the sole basis
13 for disciplinary action is the basis described by Section
14 164.051(a)(7), the board shall provide evidence from the board's
15 investigation that shows the basis for the board's findings
16 required by that subdivision.

17 (b) In any formal hearing described by Section 164.007,
18 information obtained as a result of peer review may not be used as
19 evidence except as the basis for the opinion of an expert witness
20 called by the board. When admitted into evidence, this information
21 shall be admitted under seal to protect the confidentiality of the
22 documents. In the event that a decision of the board or the State
23 Office of Administrative Hearings is appealed to a district court
24 or other court, the confidentiality protections relating to the
25 medical peer review committee documents shall continue.

26 (c) A member of a peer review committee is not subject to
27 subpoena and may not be compelled to provide evidence in a formal

1 hearing.

2 SECTION 1.42. Section 164.052, Occupations Code, is amended
3 by amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) A physician or an applicant for a license to practice
6 medicine commits a prohibited practice if that person:

7 (1) submits to the board a false or misleading
8 statement, document, or certificate in an application for a
9 license;

10 (2) presents to the board a license, certificate, or
11 diploma that was illegally or fraudulently obtained;

12 (3) commits fraud or deception in taking or passing an
13 examination;

14 (4) uses alcohol or drugs in an intemperate manner
15 that, in the board's opinion, could endanger a patient's life;

16 (5) commits unprofessional or dishonorable conduct
17 that is likely to deceive or defraud the public, as provided by
18 Section 164.053, or injure the public;

19 (6) uses an advertising statement that is false,
20 misleading, or deceptive;

21 (7) advertises professional superiority or the
22 performance of professional service in a superior manner if that
23 advertising is not readily subject to verification;

24 (8) purchases, sells, barter, or uses, or offers to
25 purchase, sell, barter, or use, a medical degree, license,
26 certificate, or diploma, or a transcript of a license, certificate,
27 or diploma in or incident to an application to the board for a

1 license to practice medicine;

2 (9) alters, with fraudulent intent, a medical license,
3 certificate, or diploma, or a transcript of a medical license,
4 certificate, or diploma;

5 (10) uses a medical license, certificate, or diploma,
6 or a transcript of a medical license, certificate, or diploma that
7 has been:

8 (A) fraudulently purchased or issued;

9 (B) counterfeited; or

10 (C) materially altered;

11 (11) impersonates or acts as proxy for another person
12 in an examination required by this subtitle for a medical license;

13 (12) engages in conduct that subverts or attempts to
14 subvert an examination process required by this subtitle for a
15 medical license;

16 (13) impersonates a physician or permits another to
17 use the person's license or certificate to practice medicine in
18 this state;

19 (14) directly or indirectly employs a person whose
20 license to practice medicine has been suspended, canceled, or
21 revoked;

22 (15) associates in the practice of medicine with a
23 person:

24 (A) whose license to practice medicine has been
25 suspended, canceled, or revoked; or

26 (B) who has been convicted of the unlawful
27 practice of medicine in this state or elsewhere;

1 (16) performs or procures a criminal abortion, aids or
2 abets in the procuring of a criminal abortion, attempts to perform
3 or procure a criminal abortion, or attempts to aid or abet the
4 performance or procurement of a criminal abortion; [~~or~~]

5 (17) directly or indirectly aids or abets the practice
6 of medicine by a person, partnership, association, or corporation
7 that is not licensed to practice medicine by the board;

8 (18) performs an abortion on a woman who is pregnant
9 with a viable unborn child during the third trimester of the
10 pregnancy unless:

11 (A) the abortion is necessary to prevent the
12 death of the woman;

13 (B) the viable unborn child has a severe,
14 irreversible brain impairment; or

15 (C) the woman is diagnosed with a significant
16 likelihood of suffering imminent severe, irreversible brain damage
17 or imminent severe, irreversible paralysis; or

18 (19) performs an abortion on an unemancipated minor
19 without the written consent of the child's parent, managing
20 conservator, or legal guardian or without a court order, as
21 provided by Section 33.003 or 33.004, Family Code, authorizing the
22 minor to consent to the abortion, unless the physician concludes
23 that on the basis of the physician's good faith clinical judgment, a
24 condition exists that complicates the medical condition of the
25 pregnant minor and necessitates the immediate abortion of her
26 pregnancy to avert her death or to avoid a serious risk of
27 substantial impairment of a major bodily function and that there is

1 insufficient time to obtain the consent of the child's parent,
2 managing conservator, or legal guardian.

3 (c) The board shall adopt the forms necessary for physicians
4 to obtain the consent required for an abortion to be performed on an
5 unemancipated minor under Subsection (a). The form executed to
6 obtain consent or any other required documentation must be retained
7 by the physician until the later of the fifth anniversary of the
8 date of the minor's majority or the seventh anniversary of the date
9 the physician received or created the documentation for the record.

10 SECTION 1.43. Section 164.056, Occupations Code, is amended
11 by amending Subsection (a) and adding Subsections (d) and (e) to
12 read as follows:

13 (a) In enforcing Section 164.051(a)(4), the board, on
14 probable cause, shall request the affected physician or applicant
15 to submit to a mental or physical examination by physicians
16 designated by the board. The board shall adopt guidelines, in
17 conjunction with persons interested in or affected by this section,
18 to enable the board to evaluate circumstances in which a physician
19 or applicant may be required to submit to an examination for mental
20 or physical health conditions, alcohol and substance abuse, or
21 professional behavior problems.

22 (d) The board shall refer a physician or applicant with a
23 physical or mental health condition to the most appropriate medical
24 specialist for evaluation. The board may not require a physician or
25 applicant to submit to an examination by a physician having a
26 specialty specified by the board unless medically indicated. The
27 board may not require a physician or applicant to submit to an

1 examination to be conducted an unreasonable distance from the
2 person's home or place of business unless the physician or
3 applicant resides and works in an area in which there are a limited
4 number of physicians able to perform an appropriate examination.

5 (e) The guidelines adopted under this section do not impair
6 or remove the board's power to make an independent licensing
7 decision.

8 SECTION 1.44. Section 164.202, Occupations Code, is amended
9 to read as follows:

10 Sec. 164.202. REHABILITATION ORDER. (a) The board,
11 through an agreed order or after a contested proceeding, may impose
12 a nondisciplinary rehabilitation order on an applicant, as a
13 prerequisite for issuing a license, or on a license holder, based
14 on:

15 (1) intemperate use of drugs or alcohol directly
16 resulting from habituation or addiction caused by medical care or
17 treatment provided by a physician;

18 (2) self-reported intemperate use of drugs or alcohol
19 during the five years preceding the report that could adversely
20 affect the reporter's ability to practice medicine safely, if:

21 (A) the reporting individual has not previously
22 been the subject of a substance abuse-related order of the board;
23 and

24 (B) the applicant or license holder has not
25 committed a violation of the standard of care as a result of the
26 intemperate use of drugs or alcohol;

27 (3) a judgment by a court that the applicant or license

1 holder is of unsound mind;

2 (4) a determination of impairment based on a mental or
3 physical examination offered to establish the impairment in an
4 evidentiary hearing before the board in which the applicant or
5 license holder was provided an opportunity to respond; or

6 (5) an admission by the applicant or license holder
7 indicating that the applicant or license holder suffers from a
8 potentially dangerous limitation or an inability to practice
9 medicine with reasonable skill and safety by reason of illness or as
10 a result of any physical or mental condition.

11 (b) The board may not issue an order under this section if,
12 before the individual signs the proposed order, the board receives
13 a valid complaint with regard to the individual based on the
14 individual's intemperate use of drugs or alcohol in a manner
15 affecting the standard of care.

16 (c) The board must determine whether an individual has
17 committed a standard of care violation described by Subsection
18 (a)(2) before imposing an order under this section.

19 (d) The board may disclose a rehabilitation order to a local
20 or statewide private medical association only as provided by
21 Section 164.205.

22 SECTION 1.45. Subchapter E, Chapter 164, Occupations Code,
23 is amended by adding Section 164.205 to read as follows:

24 Sec. 164.205. RESPONSIBILITIES OF PRIVATE MEDICAL
25 ASSOCIATIONS. (a) If a rehabilitation order imposed under Section
26 164.202 requires a license holder to participate in activities or
27 programs provided by a local or statewide private medical

1 association, the board shall inform the association of the license
2 holder's duties under the order. The information provided under
3 this section must include specific guidance to enable the
4 association to comply with any requirements necessary to assist in
5 the physician's rehabilitation.

6 (b) The board may provide to the association any information
7 that the board determines to be necessary, including a copy of the
8 rehabilitation order. Any information received by the association
9 remains confidential, is not subject to discovery, subpoena, or
10 other means of legal compulsion, and may be disclosed only to the
11 board.

12 SECTION 1.46. Subchapter E, Chapter 164, Occupations Code,
13 is amended by adding Section 164.206 to read as follows:

14 Sec. 164.206. REFUND. (a) Subject to Subsection (b), the
15 board may order a license holder to pay a refund to a consumer as
16 provided in an agreement resulting from an informal settlement
17 conference instead of or in addition to imposing an administrative
18 penalty under Chapter 165.

19 (b) The amount of a refund ordered as provided in an
20 agreement resulting from an informal settlement conference may not
21 exceed the amount the consumer paid to the license holder for a
22 service regulated by this subtitle. The board may not require
23 payment of other damages or estimate harm in a refund order.

24 SECTION 1.47. The heading to Subchapter B, Chapter 165,
25 Occupations Code, is amended to read as follows:

26 SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

27 SECTION 1.48. Subchapter B, Chapter 165, Occupations Code,

1 is amended by adding Section 165.052 to read as follows:

2 Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to
3 the board that a person who is not licensed under this subtitle is
4 violating this subtitle, a rule adopted under this subtitle, or
5 another state statute or rule relating to the practice of medicine,
6 the board after notice and opportunity for a hearing may issue a
7 cease and desist order prohibiting the person from engaging in the
8 activity.

9 (b) A violation of an order under this section constitutes
10 grounds for imposing an administrative penalty under this chapter.

11 SECTION 1.49. The following laws are repealed:

12 (1) Subsection (d), Section 152.010, Occupations
13 Code; and

14 (2) Subsections (d) through (h), Section 157.0542,
15 Occupations Code.

16 SECTION 1.50. Not later than January 1, 2006, the Texas
17 Medical Board shall:

18 (1) adopt the policies required by Sections 153.057
19 and 153.058, Occupations Code, as added by this article; and

20 (2) adopt the rules required by Subtitle B, Title 3,
21 Occupations Code, as amended by this article.

22 SECTION 1.51. (a) The changes in law made by Sections
23 152.003, 152.006, and 152.010, Occupations Code, as amended by this
24 article, regarding the prohibitions on or qualifications of members
25 of the Texas Medical Board do not affect the entitlement of a member
26 serving on the board immediately before September 1, 2005, to
27 continue to serve and function as a member of the board for the

1 remainder of the member's term. The changes in law made by those
2 sections apply only to a member appointed on or after September 1,
3 2005.

4 (b) The Texas Medical Board shall adopt rules necessary to
5 implement the requirements of Section 155.006, Occupations Code, as
6 added by this article, not later than March 1, 2006.

7 (c) The changes in law made by this article related to the
8 filing, investigation, or disposition of a complaint under Subtitle
9 B, Title 3, Occupations Code, as amended by this article, apply only
10 to a complaint filed with the Texas Medical Board on or after the
11 effective date of this Act. A complaint filed before the effective
12 date of this Act is governed by the law as it existed immediately
13 before that date, and the former law is continued in effect for that
14 purpose.

15 (d) The changes in law made by this article governing the
16 eligibility of a person for a license under Subtitle B, Title 3,
17 Occupations Code, apply only to an application for a license filed
18 on or after the effective date of this Act. A license application
19 filed before the effective date of this Act is governed by the law
20 in effect at the time the application was filed, and the former law
21 is continued in effect for that purpose.

22 (e) The change in law made by this article with respect to
23 conduct that is grounds for imposition of a disciplinary sanction,
24 including a refund or cease and desist order, applies only to
25 conduct that occurs on or after the effective date of this Act.
26 Conduct that occurs before the effective date of this Act is
27 governed by the law in effect on the date the conduct occurred, and

1 the former law is continued in effect for that purpose.

2 SECTION 1.52. MEDICAL PEER REVIEW STUDY. (a) The
3 presiding officer of each house of the legislature shall appoint a
4 joint interim committee to study the medical peer review process in
5 hospitals and other health care entities in this state. The study
6 shall include an examination of:

7 (1) the use of medical peer review in identifying and
8 reporting to the Texas Medical Board the conduct of or the quality
9 of care provided by physicians who are members of the medical staffs
10 of hospitals and other health care entities;

11 (2) the use of medical peer review in disciplining a
12 physician based on the conduct or quality of care provided by the
13 physician as a member of the medical staff of a hospital or other
14 health care entity;

15 (3) the appropriate level of immunity protections for
16 hospitals and other health care entities, medical peer review
17 committees, and individuals who participate on those committees in
18 health care liability claims brought by patients alleging bad faith
19 physician credentialing; and

20 (4) whether there are adequate mechanisms in state law
21 to ensure appropriate regulatory supervision of the
22 appropriateness and effectiveness of medical peer review in
23 hospitals and other health care entities.

24 (b) As part of the joint interim committee's study, the
25 committee shall investigate:

26 (1) the adequacy of the Texas Medical Board's
27 oversight and investigation of physician claims that the medical

1 peer review process is misused, including whether the board's
2 oversight and investigation powers should be strengthened and how
3 other states investigate claims of misuse of the medical peer
4 review process;

5 (2) the state regulatory reporting mechanisms
6 relating to the appropriateness and effectiveness of medical peer
7 review in hospitals and other health care entities and the
8 oversight and authority of the state to ensure good faith medical
9 peer review in hospitals and other health care entities in this
10 state;

11 (3) the potentially negative impact on medical peer
12 review in this state that could result from potential changes to:

13 (A) immunity protections; or

14 (B) the oversight and investigation of physician
15 claims of misuse of the medical peer review process;

16 (4) how the laws of other states address immunity
17 protections for medical peer review; and

18 (5) any other matter relevant to the medical peer
19 review process, including how state and federal law identifies
20 physician conduct that is considered to be unprofessional or unsafe
21 by a medical peer review committee.

22 (c) The Department of State Health Services and the Texas
23 Medical Board shall provide information and assistance to the joint
24 interim committee in conducting the investigation required by this
25 section on the committee's request.

26 (d) Not later than January 1, 2007, the joint interim
27 committee shall report the committee's findings to the governor,

1 lieutenant governor, and speaker of the house of representatives.

2 (e) This section expires September 1, 2007.

3 ARTICLE 2. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
4 PHYSICIAN ASSISTANT EXAMINERS

5 SECTION 2.01. Section 204.002, Occupations Code, is amended
6 to read as follows:

7 Sec. 204.002. DEFINITIONS. In this chapter:

8 (1) "Medical board" means the Texas [~~State Board of~~
9 Medical Board ~~Examiners~~].

10 (2) "Physician assistant board" means the Texas [~~State~~
11 ~~Board of~~] Physician Assistant Board ~~Examiners~~].

12 SECTION 2.02. The heading to Subchapter B, Chapter 204,
13 Occupations Code, is amended to read as follows:

14 SUBCHAPTER B. TEXAS [~~STATE BOARD OF~~] PHYSICIAN ASSISTANT BOARD
15 [~~EXAMINERS~~]

16 SECTION 2.03. Section 204.051, Occupations Code, is amended
17 to read as follows:

18 Sec. 204.051. TEXAS [~~STATE BOARD OF~~] PHYSICIAN ASSISTANT
19 BOARD [~~EXAMINERS~~]. (a) The Texas [~~State Board of~~] Physician
20 Assistant Board ~~Examiners~~ is an advisory board to the Texas State
21 Board of Medical Examiners.

22 (b) A reference in any other law to the former Texas State
23 Board of Physician Assistant Examiners means the Texas Physician
24 Assistant Board.

25 SECTION 2.04. Section 204.052, Occupations Code, is amended
26 to read as follows:

27 Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician

1 assistant board consists of nine members appointed by the governor
2 with the advice and consent of the senate as follows:

3 (1) three practicing physician assistant members who
4 each have at least five years of clinical experience as a physician
5 assistant;

6 (2) three physician members who are licensed in this
7 state and who supervise physician assistants; and

8 (3) three public members who are not licensed as a
9 physician or physician assistant.

10 (b) Appointments to the physician assistant board shall be
11 made without regard to the race, color, disability, sex, religion,
12 age, or national origin of the appointee.

13 SECTION 2.05. Section 204.053, Occupations Code, is amended
14 to read as follows:

15 Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS.

16 (a) In this section, "Texas trade association" means a cooperative
17 and voluntarily joined statewide association of business or
18 professional competitors in this state designed to assist its
19 members and its industry or profession in dealing with mutual
20 business or profession problems and in promoting their common
21 interest.

22 (b) A person may not be [~~is not eligible for appointment as~~]
23 a public member of the physician assistant board if the person or
24 the person's spouse:

25 (1) is registered, certified, or licensed by a [~~an~~]
26 ~~occupational~~] regulatory agency in the field of health care; [~~or~~]

27 (2) is employed by or participates in the management

1 of a business entity or other organization regulated by or
2 receiving money from the medical board or physician assistant
3 board;

4 (3) owns or controls, directly or indirectly, more
5 than a 10 percent interest in a business entity or other
6 organization regulated by or receiving money from the medical board
7 or physician assistant board; or

8 (4) uses or receives a substantial amount of tangible
9 goods, services, or money from the medical board or physician
10 assistant board other than compensation or reimbursement
11 authorized by law for physician assistant board membership,
12 attendance, or expenses [~~that provides health care services or that~~
13 ~~sells, manufactures, or distributes health care supplies or~~
14 ~~equipment~~].

15 (c) [(b)] A person may not be [~~serve as~~] a member of the
16 physician assistant board and may not be a medical board employee in
17 a "bona fide executive, administrative, or professional capacity,"
18 as that phrase is used for purposes of establishing an exemption to
19 the overtime provisions of the federal Fair Labor Standards Act of
20 1938 (29 U.S.C. Section 201 et seq.), if:

21 (1) the person is an officer, employee, or paid
22 consultant of a Texas trade association in the field of health care;
23 or

24 (2) the person's spouse is an officer, manager, or paid
25 consultant of a Texas trade association in the field of health care.

26 (d) A person may not be a member of the physician assistant
27 board or act as the general counsel to the physician assistant board

1 if the person is required to register as a lobbyist under Chapter
2 305, Government Code, because of the person's activities for
3 compensation on behalf of a profession related to the operation of
4 the medical board or physician assistant board.

5 SECTION 2.06. Section 204.055, Occupations Code, is amended
6 to read as follows:

7 Sec. 204.055. OFFICERS. The governor shall designate a
8 member of the physician assistant board as the presiding officer of
9 the board to serve in that capacity at the will of the governor. The
10 physician assistant board shall select from its membership a
11 [~~presiding officer and a~~] secretary to serve a one-year term
12 [~~terms~~].

13 SECTION 2.07. Section 204.056, Occupations Code, is amended
14 by amending Subsection (a) and adding Subsection (c) to read as
15 follows:

16 (a) It is a ground for removal from the physician assistant
17 board that a member:

18 (1) does not have at the time of taking office
19 [~~appointment~~] the qualifications required by Sections 204.052 and
20 204.053 [~~this subchapter for appointment to the board~~];

21 (2) does not maintain during [~~the~~] service on the
22 physician assistant board the qualifications required by Sections
23 204.052 and 204.053 [~~this subchapter for appointment to the board~~];
24 [~~or~~]

25 (3) is ineligible for membership under Section
26 204.053;

27 (4) cannot, because of illness or disability,

1 discharge the member's duties for a substantial part of the member's
2 term; or

3 (5) is absent from more than half [~~fails to attend at~~
4 ~~least one-half~~] of the regularly scheduled physician assistant
5 board meetings that the member is eligible to attend during a
6 calendar year without an excuse approved by a majority vote of the
7 board.

8 (c) If the executive director of the medical board has
9 knowledge that a potential ground for removal exists, the executive
10 director shall notify the presiding officer of the physician
11 assistant board of the potential ground. The presiding officer
12 shall then notify the governor and the attorney general that a
13 potential ground for removal exists. If the potential ground for
14 removal involves the presiding officer, the executive director
15 shall notify the next highest ranking officer of the physician
16 assistant board, who shall then notify the governor and the
17 attorney general that a potential ground for removal exists.

18 SECTION 2.08. Subchapter B, Chapter 204, Occupations Code,
19 is amended by adding Section 204.059 to read as follows:

20 Sec. 204.059. TRAINING. (a) A person who is appointed to
21 and qualifies for office as a member of the physician assistant
22 board may not vote, deliberate, or be counted as a member in
23 attendance at a meeting of the board until the person completes a
24 training program that complies with this section.

25 (b) The training program must provide the person with
26 information regarding:

27 (1) this chapter and the physician assistant board's

1 programs, functions, rules, and budget;

2 (2) the results of the most recent formal audit of the
3 physician assistant board;

4 (3) the requirements of laws relating to open
5 meetings, public information, administrative procedure, and
6 conflicts of interest; and

7 (4) any applicable ethics policies adopted by the
8 physician assistant board or the Texas Ethics Commission.

9 (c) A person appointed to the physician assistant board is
10 entitled to reimbursement, as provided by the General
11 Appropriations Act, for the travel expenses incurred in attending
12 the training program regardless of whether the attendance at the
13 program occurs before or after the person qualifies for office.

14 SECTION 2.09. Subchapter C, Chapter 204, Occupations Code,
15 is amended by adding Section 204.1015 to read as follows:

16 Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN
17 RULEMAKING PROCESS. (a) The physician assistant board shall adopt
18 guidelines to establish procedures for receiving input during the
19 rulemaking process from individuals and groups that have an
20 interest in matters under the board's jurisdiction. The guidelines
21 must provide an opportunity for those individuals and groups to
22 provide input before the physician assistant board submits the rule
23 to the medical board for approval.

24 (b) A rule adopted by the medical board may not be
25 challenged on the grounds that the physician assistant board did
26 not comply with this section. If the physician assistant board was
27 unable to solicit a significant amount of input from the public or

1 affected persons early in the rulemaking process, the physician
2 assistant board shall state in writing the reasons why the
3 physician assistant board was unable to do so.

4 SECTION 2.10. Subchapter C, Chapter 204, Occupations Code,
5 is amended by adding Section 204.105 to read as follows:

6 Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION.
7 The physician assistant board shall adopt rules and guidelines as
8 necessary to comply with Chapter 53, except to the extent the
9 requirements of this chapter are stricter than the requirements of
10 Chapter 53.

11 SECTION 2.11. Subchapter C, Chapter 204, Occupations Code,
12 is amended by adding Section 204.106 to read as follows:

13 Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the
14 advice and approval of the medical board, the physician assistant
15 board shall develop and implement policies that clearly separate
16 the policy-making responsibilities of the physician assistant
17 board and the management responsibilities of the executive director
18 and the staff of the medical board.

19 SECTION 2.12. Subchapter C, Chapter 204, Occupations Code,
20 is amended by adding Section 204.107 to read as follows:

21 Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice
22 and approval of the medical board, the physician assistant board
23 shall develop and implement policies that provide the public with a
24 reasonable opportunity to appear before the physician assistant
25 board and to speak on any issue under the jurisdiction of the
26 physician assistant board.

27 SECTION 2.13. Subchapter C, Chapter 204, Occupations Code,

1 is amended by adding Section 204.108 to read as follows:

2 Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician
3 assistant board shall maintain a system to promptly and efficiently
4 act on complaints filed with the physician assistant board. The
5 board shall maintain:

6 (1) information about the parties to the complaint and
7 the subject matter of the complaint;

8 (2) a summary of the results of the review or
9 investigation of the complaint; and

10 (3) information about the disposition of the
11 complaint.

12 (b) The physician assistant board shall make information
13 available describing its procedures for complaint investigation
14 and resolution.

15 (c) The physician assistant board shall periodically notify
16 the parties of the status of the complaint until final disposition
17 of the complaint, unless the notice would jeopardize an
18 investigation.

19 SECTION 2.14. Subchapter C, Chapter 204, Occupations Code,
20 is amended by adding Section 204.109 to read as follows:

21 Sec. 204.109. USE OF TECHNOLOGY. Subject to the advice and
22 approval of the medical board, the physician assistant board shall
23 implement a policy requiring the physician assistant board to use
24 appropriate technological solutions to improve the physician
25 assistant board's ability to perform its functions. The policy
26 must ensure that the public is able to interact with the board on
27 the Internet.

1 SECTION 2.15. Subchapter C, Chapter 204, Occupations Code,
2 is amended by adding Section 204.110 to read as follows:

3 Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE
4 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
5 of the medical board, the physician assistant board shall develop
6 and implement a policy to encourage the use of:

7 (1) negotiated rulemaking procedures under Chapter
8 2008, Government Code, for the adoption of physician assistant
9 board rules; and

10 (2) appropriate alternative dispute resolution
11 procedures under Chapter 2009, Government Code, to assist in the
12 resolution of internal and external disputes under the physician
13 assistant board's jurisdiction.

14 (b) The physician assistant board's procedures relating to
15 alternative dispute resolution must conform, to the extent
16 possible, to any model guidelines issued by the State Office of
17 Administrative Hearings for the use of alternative dispute
18 resolution by state agencies.

19 (c) The physician assistant board shall designate a trained
20 person to:

21 (1) coordinate the implementation of the policy
22 adopted under Subsection (a);

23 (2) serve as a resource for any training needed to
24 implement the procedures for negotiated rulemaking or alternative
25 dispute resolution; and

26 (3) collect data concerning the effectiveness of those
27 procedures, as implemented by the physician assistant board.

1 SECTION 2.16. Section 204.152, Occupations Code, is amended
2 to read as follows:

3 Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician
4 assistant board shall issue a license to an applicant who:

5 (1) meets the eligibility requirements of Section
6 204.153;

7 (2) submits an application on a form prescribed by the
8 board;

9 (3) pays the required application fee;

10 (4) certifies that the applicant is mentally and
11 physically able to function safely as a physician assistant; and

12 (5) submits to the board any other information the
13 board considers necessary to evaluate the applicant's
14 qualifications.

15 (b) The physician assistant board may delegate authority to
16 medical board employees to issue licenses under this chapter to
17 applicants who clearly meet all licensing requirements. If the
18 medical board employees determine that the applicant does not
19 clearly meet all licensing requirements, the application shall be
20 returned to the physician assistant board. A license issued under
21 this subsection does not require formal physician assistant board
22 approval.

23 SECTION 2.17. Section 204.153, Occupations Code, is amended
24 by amending Subsection (a) and adding Subsection (a-1) to read as
25 follows:

26 (a) To be eligible for a license under this chapter, an
27 applicant must:

1 (1) successfully complete an educational program for
2 physician assistants or surgeon assistants accredited by the
3 Committee on Allied Health Education and Accreditation or by that
4 committee's predecessor or successor entities;

5 (2) pass the Physician Assistant National Certifying
6 Examination administered by the National Commission on
7 Certification of Physician Assistants;

8 (3) hold a certificate issued by the National
9 Commission on Certification of Physician Assistants;

10 (4) be of good moral character; ~~and~~

11 (5) meet any other requirement established by board
12 rule; and

13 (6) pass a jurisprudence examination approved by the
14 physician assistant board as provided by Subsection (a-1).

15 (a-1) The jurisprudence examination shall be conducted on
16 the licensing requirements and other laws, rules, or regulations
17 applicable to the physician assistant profession in this state.
18 The physician assistant board shall establish rules for the
19 jurisprudence examination under Subsection (a)(6) regarding:

20 (1) the development of the examination;

21 (2) applicable fees;

22 (3) administration of the examination;

23 (4) reexamination procedures;

24 (5) grading procedures; and

25 (6) notice of results.

26 SECTION 2.18. Section 204.156, Occupations Code, is amended
27 to read as follows:

1 Sec. 204.156. LICENSE RENEWAL. (a) On notification from
2 the physician assistant board, a person who holds a license under
3 this chapter may renew the license by:

- 4 (1) paying the required renewal fee;
5 (2) submitting the appropriate form; and
6 (3) meeting any other requirement established by board
7 rule.

8 (b) The physician assistant board by rule may adopt a system
9 under which licenses expire on various dates during the year.

10 (c) A person who is otherwise eligible to renew a license
11 may renew an unexpired license by paying the required renewal fee to
12 the physician assistant board before the expiration date of the
13 license. A person whose license has expired may not engage in
14 activities that require a license until the license has been
15 renewed.

16 (d) A person whose license has been expired for 90 days or
17 less may renew the license by paying to the physician assistant
18 board a fee that is equal to 1-1/2 times the renewal fee for the
19 license.

20 (e) A person whose license has been expired for more than 90
21 days but less than one year may renew the license by paying to the
22 physician assistant board a fee equal to two times the renewal fee
23 for the license.

24 (f) A person who was licensed in this state, moved to
25 another state, and is currently licensed and has been in practice in
26 the other state for the two years preceding the date of the
27 application may obtain a new license without reexamination. The

1 person must pay to the physician assistant board a fee that is equal
2 to two times the normally required renewal fee for the license.

3 SECTION 2.19. Subchapter D, Chapter 204, Occupations Code,
4 is amended by adding Section 204.1562 to read as follows:

5 Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS.

6 (a) The physician assistant board by rule shall adopt, monitor,
7 and enforce a reporting program for the continuing medical
8 education of license holders. The physician assistant board shall
9 adopt and administer rules that:

10 (1) establish the number of hours of continuing
11 medical education the physician assistant board determines
12 appropriate as a prerequisite to the renewal of a license under this
13 chapter;

14 (2) require at least one-half of the hours of
15 continuing medical education established under Subdivision (1) to
16 be approved by the physician assistant board; and

17 (3) adopt a process to assess a license holder's
18 participation in continuing medical education courses.

19 (b) The physician assistant board may require that a
20 specified number of continuing medical education hours be completed
21 informally, including through self-study and self-directed
22 education.

23 SECTION 2.20. Section 204.157, Occupations Code, is amended
24 by amending Subsection (c) and adding Subsection (d) to read as
25 follows:

26 (c) A person whose license is on inactive status under this
27 section may return the person's license to active status by:

- 1 (1) applying to the physician assistant board; [~~and~~]
2 (2) satisfying the requirements of Section 204.156;
3 and
4 (3) paying the fee established by the physician
5 assistant board for returning a license to active status.

6 (d) The physician assistant board by rule shall establish a
7 limit on the length of time a physician assistant's license may
8 remain on inactive status.

9 SECTION 2.21. Subchapter F, Chapter 204, Occupations Code,
10 is amended by adding Section 204.2511 to read as follows:

11 Sec. 204.2511. CONDUCT OF INVESTIGATION. The physician
12 assistant board shall complete a preliminary investigation of a
13 complaint filed with the physician assistant board not later than
14 the 30th day after the date of receiving the complaint. The
15 physician assistant board shall first determine whether the
16 physician assistant constitutes a continuing threat to the public
17 welfare. On completion of the preliminary investigation, the
18 physician assistant board shall determine whether to officially
19 proceed on the complaint. If the physician assistant board fails to
20 complete the preliminary investigation in the time required by this
21 section, the physician assistant board's official investigation of
22 the complaint is considered to commence on that date.

23 SECTION 2.22. Subsection (a), Section 204.301, Occupations
24 Code, is amended to read as follows:

25 (a) Except as provided by Section 204.305, on a
26 determination that an applicant or license holder committed an act
27 described in Section 204.302, 204.303, or 204.304, the physician

1 assistant board by order shall take any of the following actions:

2 (1) deny the person's application for a license
3 [~~application~~] or license renewal or revoke the person's license or
4 other authorization;

5 (2) require the person to submit to the care,
6 counseling, or treatment of a health care practitioner designated
7 by the physician assistant board;

8 (3) stay enforcement of an order and place the person
9 on probation;

10 (4) require the person to complete additional
11 training;

12 (5) suspend, limit, or restrict the person's license,
13 including:

14 (A) limiting the practice of the person to, or
15 excluding from the practice, one or more specified activities of
16 the practice as a physician assistant; or

17 (B) stipulating periodic physician assistant
18 board review;

19 (6) assess an administrative penalty against the
20 person under Section 204.351;

21 (7) order the person to perform public service; or

22 (8) administer a public reprimand.

23 SECTION 2.23. Subchapter G, Chapter 204, Occupations Code,
24 is amended by adding Section 204.3011 to read as follows:

25 Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT
26 DISPOSITIONS. (a) The physician assistant board may delegate to a
27 committee of medical board employees the authority to dismiss or

1 enter into an agreed settlement of a complaint that does not relate
2 directly to patient care or that involves only administrative
3 violations. The disposition determined by the committee must be
4 approved by the physician assistant board at a public meeting.

5 (b) A complaint delegated under this section shall be
6 referred for informal proceedings under Section 204.312 if:

7 (1) the committee of employees determines that the
8 complaint should not be dismissed or settled;

9 (2) the committee is unable to reach an agreed
10 settlement; or

11 (3) the affected physician assistant requests that the
12 complaint be referred for informal proceedings.

13 SECTION 2.24. Subchapter G, Chapter 204, Occupations Code,
14 is amended by adding Section 204.3045 to read as follows:

15 Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The
16 physician assistant board shall adopt guidelines, in conjunction
17 with persons interested in or affected by this section, to enable
18 the physician assistant board to evaluate circumstances in which a
19 physician assistant or applicant may be required to submit to an
20 examination for mental or physical health conditions, alcohol and
21 substance abuse, or professional behavior problems.

22 (b) The physician assistant board shall refer a physician
23 assistant or applicant with a physical or mental health condition
24 to the most appropriate medical specialist for evaluation. The
25 physician assistant board may not require a physician assistant or
26 applicant to submit to an examination by a physician having a
27 specialty specified by the physician assistant board unless

1 medically indicated. The physician assistant board may not require
2 a physician assistant or applicant to submit to an examination to be
3 conducted an unreasonable distance from the person's home or place
4 of business unless the physician assistant or applicant resides and
5 works in an area in which there are a limited number of physicians
6 able to perform an appropriate examination.

7 (c) The guidelines adopted under this section do not impair
8 or remove the physician assistant board's power to make an
9 independent licensing decision.

10 SECTION 2.25. Section 204.305, Occupations Code, is amended
11 to read as follows:

12 Sec. 204.305. REHABILITATION ORDER. (a) The physician
13 assistant board, through an agreed order or after a contested
14 proceeding, may impose a rehabilitation order on an applicant, as a
15 prerequisite for issuing a license, or on a license holder based on:

16 (1) the person's intemperate use of drugs or alcohol
17 directly resulting from habituation or addiction caused by medical
18 care or treatment provided by a physician;

19 (2) the person's intemperate use of drugs or alcohol
20 during the five years preceding the date of the report that could
21 adversely affect the person's ability to safely practice as a
22 physician assistant, if the person:

23 (A) reported the use; ~~and~~

24 (B) has not previously been the subject of a
25 substance abuse related order of the board; and

26 (C) has not committed a violation of the standard
27 of care as a result of the intemperate use of drugs or alcohol;

1 (3) a judgment by a court that the person is of unsound
2 mind; or

3 (4) the results of a mental or physical examination,
4 or an admission by the person, indicating that the person suffers
5 from a potentially dangerous limitation or an inability to practice
6 as a physician assistant with reasonable skill and safety because
7 of illness or any other physical or mental condition.

8 (b) The physician assistant board may not issue an order
9 under this section if, before the individual signs the proposed
10 order, the physician assistant board receives a valid complaint
11 with regard to the individual based on the individual's intemperate
12 use of drugs or alcohol in a manner affecting the standard of care.

13 (c) The physician assistant board must determine whether an
14 individual has committed a standard of care violation described by
15 Subsection (a)(2) before imposing an order under this section.

16 (d) The physician assistant board may disclose a
17 rehabilitation order to a local or statewide private association of
18 physician assistants only as provided by Section 204.3075.

19 SECTION 2.26. Subchapter G, Chapter 204, Occupations Code,
20 is amended by adding Section 204.3075 to read as follows:

21 Sec. 204.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

22 (a) If a rehabilitation order imposed under Section 204.305
23 requires a license holder to participate in activities or programs
24 provided by a local or statewide private association of physician
25 assistants, the physician assistant board shall inform the
26 association of the license holder's duties under the order. The
27 information provided under this section must include specific

1 guidance to enable the association to comply with any requirements
2 necessary to assist in the physician assistant's rehabilitation.

3 (b) The physician assistant board may provide to the
4 association any information that the board determines to be
5 necessary, including a copy of the rehabilitation order. Any
6 information received by the association remains confidential, is
7 not subject to discovery, subpoena, or other means of legal
8 compulsion, and may be disclosed only to the physician assistant
9 board.

10 SECTION 2.27. Subchapter G, Chapter 204, Occupations Code,
11 is amended by adding Section 204.312 to read as follows:

12 Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician
13 assistant board by rule shall adopt procedures governing:

14 (1) informal disposition of a contested case under
15 Section 2001.056, Government Code; and

16 (2) informal proceedings held in compliance with
17 Section 2001.054, Government Code.

18 (b) Rules adopted under this section must require that:

19 (1) an informal meeting in compliance with Section
20 2001.054, Government Code, be scheduled not later than the 180th
21 day after the date the complaint is filed with the physician
22 assistant board, unless good cause is shown by the physician
23 assistant board for scheduling the informal meeting after that
24 date;

25 (2) the physician assistant board give notice to the
26 license holder of the time and place of the meeting not later than
27 the 30th day before the date the meeting is held;

1 (3) the complainant and the license holder be provided
2 an opportunity to be heard;

3 (4) at least one of the physician assistant board
4 members participating in the informal meeting as a panelist be a
5 member who represents the public;

6 (5) the physician assistant board's legal counsel or a
7 representative of the attorney general be present to advise the
8 physician assistant board or the medical board's staff; and

9 (6) a member of the medical board's staff be at the
10 meeting to present to the physician assistant board's
11 representative the facts the staff reasonably believes it could
12 prove by competent evidence or qualified witnesses at a hearing.

13 (c) An affected physician assistant is entitled to:

14 (1) reply to the staff's presentation; and

15 (2) present the facts the physician assistant
16 reasonably believes the physician assistant could prove by
17 competent evidence or qualified witnesses at a hearing.

18 (d) After ample time is given for the presentations, the
19 physician assistant board representative shall recommend that the
20 investigation be closed or shall attempt to mediate the disputed
21 matters and make a recommendation regarding the disposition of the
22 case in the absence of a hearing under applicable law concerning
23 contested cases.

24 (e) If the license holder has previously been the subject of
25 disciplinary action by the physician assistant board, the physician
26 assistant board shall schedule the informal meeting as soon as
27 practicable but not later than the deadline prescribed by

1 Subsection (b)(1).

2 SECTION 2.28. Subchapter G, Chapter 204, Occupations Code,
3 is amended by adding Section 204.313 to read as follows:

4 Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN
5 INFORMAL PROCEEDINGS. (a) In an informal meeting under Section
6 204.312, at least two panelists shall be appointed to determine
7 whether an informal disposition is appropriate.

8 (b) Notwithstanding Subsection (a) and Section
9 204.312(b)(4), an informal proceeding may be conducted by one
10 panelist if the affected physician assistant waives the requirement
11 that at least two panelists conduct the informal proceeding. If the
12 physician assistant waives that requirement, the panelist may be
13 any member of the physician assistant board.

14 (c) The panel requirements described by Subsections (a) and
15 (b) apply to an informal proceeding conducted by the physician
16 assistant board under Section 204.312, including a proceeding to:

17 (1) consider a disciplinary case to determine if a
18 violation has occurred; or

19 (2) request modification or termination of an order.

20 (d) The panel requirements described by Subsections (a) and
21 (b) do not apply to an informal proceeding conducted by the
22 physician assistant board under Section 204.312 to show compliance
23 with an order of the physician assistant board.

24 SECTION 2.29. Subchapter G, Chapter 204, Occupations Code,
25 is amended by adding Sections 204.314 and 204.3145 to read as
26 follows:

27 Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN

1 INFORMAL PROCEEDINGS. (a) A physician assistant board member that
2 serves as a panelist at an informal meeting under Section 204.312
3 shall make recommendations for the disposition of a complaint or
4 allegation. The member may request the assistance of a medical
5 board employee at any time.

6 (b) Medical board employees shall present a summary of the
7 allegations against the affected physician assistant and of the
8 facts pertaining to the allegation that the employees reasonably
9 believe may be proven by competent evidence at a formal hearing.

10 (c) A physician assistant board or medical board attorney
11 shall act as counsel to the panel and, notwithstanding Subsection
12 (e), shall be present during the informal meeting and the panel's
13 deliberations to advise the panel on legal issues that arise during
14 the proceeding. The attorney may ask questions of participants in
15 the informal meeting to clarify any statement made by the
16 participant. The attorney shall provide to the panel a historical
17 perspective on comparable cases that have appeared before the
18 physician assistant board or medical board, keep the proceedings
19 focused on the case being discussed, and ensure that the medical
20 board's employees and the affected physician assistant have an
21 opportunity to present information related to the case. During the
22 panel's deliberations, the attorney may be present only to advise
23 the panel on legal issues and to provide information on comparable
24 cases that have appeared before the physician assistant board or
25 medical board.

26 (d) The panel and medical board employees shall provide an
27 opportunity for the affected physician assistant and the physician

1 assistant's authorized representative to reply to the medical board
2 employees' presentation and to present oral and written statements
3 and facts that the physician assistant and representative
4 reasonably believe could be proven by competent evidence at a
5 formal hearing.

6 (e) An employee of the medical board who participated in the
7 presentation of the allegation or information gathered in the
8 investigation of the complaint, the affected physician assistant,
9 the physician assistant's authorized representative, the
10 complainant, the witnesses, and members of the public may not be
11 present during the deliberations of the panel. Only the members of
12 the panel and the attorney serving as counsel to the panel may be
13 present during the deliberations.

14 (f) The panel shall recommend the dismissal of the complaint
15 or allegations or, if the panel determines that the affected
16 physician assistant has violated a statute or physician assistant
17 board rule, the panel may recommend physician assistant board
18 action and terms for an informal settlement of the case.

19 (g) The panel's recommendations under Subsection (f) must
20 be made in a written order and presented to the affected physician
21 assistant and the physician assistant's authorized representative.
22 The physician assistant may accept the proposed settlement within
23 the time established by the panel at the informal meeting. If the
24 physician assistant rejects the proposed settlement or does not act
25 within the required time, the physician assistant board may proceed
26 with the filing of a formal complaint with the State Office of
27 Administrative Hearings.

1 Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The
2 physician assistant board shall prohibit or limit access to an
3 investigation file relating to a license holder in an informal
4 proceeding in the manner provided by Section 164.007(c).

5 SECTION 2.30. Subchapter G, Chapter 204, Occupations Code,
6 is amended by adding Section 204.315 to read as follows:

7 Sec. 204.315. SURRENDER OF LICENSE. (a) The physician
8 assistant board may accept the voluntary surrender of a license.

9 (b) A surrendered license may not be returned to the license
10 holder unless the physician assistant board determines, under
11 physician assistant board rules, that the former holder of the
12 license is competent to resume practice.

13 (c) The physician assistant board by rule shall establish
14 guidelines for determining the competency of a former license
15 holder to return to practice.

16 SECTION 2.31. Subchapter G, Chapter 204, Occupations Code,
17 is amended by adding Section 204.316 to read as follows:

18 Sec. 204.316. REFUND. (a) Subject to Subsection (b), the
19 physician assistant board may order a license holder to pay a refund
20 to a consumer as provided in an agreement resulting from an informal
21 settlement conference instead of or in addition to imposing an
22 administrative penalty under Section 204.351.

23 (b) The amount of a refund ordered as provided in an
24 agreement resulting from an informal settlement conference may not
25 exceed the amount the consumer paid to the license holder for a
26 service regulated by this chapter. The physician assistant board
27 may not require payment of other damages or estimate harm in a

1 refund order.

2 SECTION 2.32. Subchapter G, Chapter 204, Occupations Code,
3 is amended by adding Section 204.317 to read as follows:

4 Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY
5 ADMINISTRATIVE LAW JUDGE. The physician assistant board may change
6 a finding of fact or conclusion of law or vacate or modify an order
7 of an administrative law judge only if the physician assistant
8 board makes a determination required by Section 2001.058(e),
9 Government Code.

10 SECTION 2.33. Subchapter G, Chapter 204, Occupations Code,
11 is amended by adding Section 204.318 to read as follows:

12 Sec. 204.318. EXPERT IMMUNITY. An expert who assists the
13 physician assistant board is immune from suit and judgment and may
14 not be subjected to a suit for damages for any investigation,
15 report, recommendation, statement, evaluation, finding, or other
16 action taken without fraud or malice in the course of assisting the
17 board in a disciplinary proceeding. The attorney general shall
18 represent the expert in any suit resulting from a service provided
19 by the person in good faith to the physician assistant board.

20 SECTION 2.34. The heading to Subchapter H, Chapter 204,
21 Occupations Code, is amended to read as follows:

22 SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

23 SECTION 2.35. Subchapter H, Chapter 204, Occupations Code,
24 is amended by adding Section 204.353 to read as follows:

25 Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to
26 the physician assistant board that a person who is not licensed
27 under this chapter is violating this chapter, a rule adopted under

1 this chapter, or another state statute or rule relating to
2 physician assistant practice, the board after notice and
3 opportunity for a hearing may issue a cease and desist order
4 prohibiting the person from engaging in the activity.

5 (b) A violation of an order under this section constitutes
6 grounds for imposing an administrative penalty under this
7 subchapter.

8 SECTION 2.36. Section 204.004, Occupations Code, is
9 repealed.

10 SECTION 2.37. (a) Not later than January 1, 2006, the
11 Texas Physician Assistant Board shall:

12 (1) adopt the policies required by Sections 204.109
13 and 204.110, Occupations Code, as added by this article; and

14 (2) adopt the rules required by Chapter 204,
15 Occupations Code, as amended by this article.

16 (b) Not later than March 1, 2006, the Texas Physician
17 Assistant Board shall develop the jurisprudence examination
18 required by Section 204.153, Occupations Code, as amended by this
19 article.

20 (c) The requirement to pass a jurisprudence examination
21 under Section 204.153, Occupations Code, as amended by this
22 article, applies only to an individual who applies for a license as
23 a physician assistant on or after September 1, 2006.

24 SECTION 2.38. (a) The changes in law made by Sections
25 204.053, 204.056, and 204.059, Occupations Code, as amended by this
26 article, regarding the prohibitions on or qualifications of members
27 of the Texas Physician Assistant Board do not affect the

1 entitlement of a member serving on the board immediately before
2 September 1, 2005, to continue to serve and function as a member of
3 the board for the remainder of the member's term. The changes in
4 law made by those sections apply only to a member appointed on or
5 after September 1, 2005.

6 (b) The changes in law made by this article related to the
7 filing, investigation, or resolution of a complaint under Chapter
8 204, Occupations Code, as amended by this article, apply only to a
9 complaint filed with the Texas Physician Assistant Board on or
10 after the effective date of this Act. A complaint filed before the
11 effective date of this Act is governed by the law as it existed
12 immediately before that date, and the former law is continued in
13 effect for that purpose.

14 (c) The changes in law made by this article governing the
15 authority of the Texas Physician Assistant Board to issue, renew,
16 or revoke a license under Chapter 204, Occupations Code, apply only
17 to an application for a license filed with the Texas Physician
18 Assistant Board under Chapter 204, Occupations Code, as amended by
19 this article, on or after the effective date of this Act. A license
20 application filed before the effective date of this Act is governed
21 by the law in effect at the time the application was filed, and the
22 former law is continued in effect for that purpose.

23 (d) The change in law made by this article with respect to
24 conduct that is grounds for imposition of a disciplinary sanction,
25 including a refund or cease and desist order, applies only to
26 conduct that occurs on or after the effective date of this Act.
27 Conduct that occurs before the effective date of this Act is

1 governed by the law in effect on the date the conduct occurred, and
2 the former law is continued in effect for that purpose.

3 ARTICLE 3. CONTINUATION AND FUNCTIONS OF TEXAS STATE BOARD OF
4 ACUPUNCTURE EXAMINERS

5 SECTION 3.01. Subdivisions (6), (7), and (8), Section
6 205.001, Occupations Code, are amended to read as follows:

7 (6) "Executive director" means the executive director
8 of the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

9 (7) "Medical board" means the Texas Medical [~~State~~]
10 Board [~~of Medical Examiners~~].

11 (8) "Physician" means a person licensed to practice
12 medicine by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

13 SECTION 3.02. Subsection (a), Section 205.051, Occupations
14 Code, is amended to read as follows:

15 (a) The Texas State Board of Acupuncture Examiners consists
16 of nine members appointed by the governor with the advice and
17 consent of the senate as follows:

18 (1) four acupuncturist members who have at least five
19 years of experience in the practice of acupuncture in this state and
20 who are not physicians;

21 (2) two physician members experienced in the practice
22 of acupuncture; and

23 (3) three members of the general public who are not
24 licensed or trained in a health care profession.

25 SECTION 3.03. Subsections (a), (c), and (d), Section
26 205.053, Occupations Code, are amended to read as follows:

27 (a) In this section, "Texas trade association" means a

1 ~~[nonprofit,]~~ cooperative~~[,]~~ and voluntarily joined statewide
2 association of business or professional competitors in this state
3 designed to assist its members and its industry or profession in
4 dealing with mutual business or professional problems and in
5 promoting their common interest.

6 (c) A person ~~[who is the spouse of an officer, board member,~~
7 ~~manager, or paid consultant of a Texas trade association in the~~
8 ~~field of health care]~~ may not be a member of the acupuncture board
9 and may not be a an employee of the medical board employee in a
10 "bona fide executive, administrative, or professional capacity,"
11 as that phrase is used for purposes of establishing an exemption to
12 the overtime provisions of the federal Fair Labor Standards Act of
13 1938 (29 U.S.C. Section 201 et seq.), if:

14 (1) the person is an officer, employee, or paid
15 consultant of a Texas trade association in the field of health care;
16 or

17 (2) the person's spouse is an officer, manager, or paid
18 consultant of a Texas trade association in the field of health care
19 ~~[who is exempt from the state's position classification plan or is~~
20 ~~compensated at or above the amount prescribed by the General~~
21 ~~Appropriations Act for step 1, salary group A17, of the position~~
22 ~~classification salary schedule].~~

23 (d) A person may not be a member of ~~[serve on]~~ the
24 acupuncture board or act as general counsel to the acupuncture
25 board or the medical board if the person is required to register as
26 a lobbyist under Chapter 305, Government Code, because of the
27 person's activities for compensation on behalf of a profession

1 related to the operation of the medical board or acupuncture board.

2 SECTION 3.04. Section 205.055, Occupations Code, is amended
3 to read as follows:

4 Sec. 205.055. PRESIDING OFFICER. The governor shall
5 designate an acupuncturist [~~a~~] member of the acupuncture board as
6 presiding officer. The presiding officer serves in that capacity
7 at the will of the governor.

8 SECTION 3.05. Section 205.057, Occupations Code, is
9 amended to read as follows:

10 Sec. 205.057. TRAINING. (a) A [~~To be eligible to take~~
11 ~~office as a member of the acupuncture board, a~~] person who is
12 appointed to and qualifies for office as a member of the acupuncture
13 board may not vote, deliberate, or be counted as a member in
14 attendance at a meeting of the acupuncture board until the person
15 completes [~~must complete at least one course of~~] a training program
16 that complies with this section.

17 (b) The training program must provide the person with
18 information [~~to the person~~] regarding:

- 19 (1) this chapter [~~and the acupuncture board~~];
20 (2) the programs operated by the acupuncture board;
21 (3) the role and functions of the acupuncture board;
22 (4) the rules of the acupuncture board [~~, with an~~
23 ~~emphasis on the rules that relate to disciplinary and investigatory~~
24 ~~authority~~];
25 (5) the current budget for the acupuncture board;
26 (6) the results of the most recent formal audit of the
27 acupuncture board;

1 (7) the requirements of laws relating to open
2 meetings, public information, administrative procedure, and
3 conflicts of interest [~~the~~;

4 [~~(A) open meetings law, Chapter 551, Government~~
5 ~~Code;~~

6 [~~(B) open records law, Chapter 552, Government~~
7 ~~Code; and~~

8 [~~(C) administrative procedure law, Chapter 2001,~~
9 ~~Government Code]; and~~

10 (8) [~~the requirements of the conflict of interest laws~~
11 ~~and other laws relating to public officials; and~~

12 [~~(9)~~] any applicable ethics policies adopted by the
13 acupuncture [~~medical~~] board or the Texas Ethics Commission.

14 (c) A person appointed to the acupuncture board is entitled
15 to reimbursement, as provided by the General Appropriations Act,
16 for the travel expenses incurred in attending the training program
17 regardless of whether the attendance at the program occurs before
18 or after [~~, as provided by the General Appropriations Act and as if]~~
19 the person qualifies for office [~~were a member of the acupuncture~~
20 ~~board~~].

21 SECTION 3.06. Section 205.101, Occupations Code, is amended
22 to read as follows:

23 Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE
24 BOARD. (a) Subject to the advice and approval of the medical
25 board, the acupuncture board shall:

26 (1) establish qualifications for an acupuncturist to
27 practice in this state;

1 (2) establish minimum education and training
2 requirements necessary for the acupuncture board to recommend that
3 the medical board issue a license to practice acupuncture;

4 (3) administer an examination that is validated by
5 independent testing professionals for a license to practice
6 acupuncture;

7 (4) develop requirements for licensure by endorsement
8 of other states;

9 (5) prescribe the application form for a license to
10 practice acupuncture;

11 (6) recommend rules to establish licensing and other
12 fees [~~make recommendations on applications for licenses to practice~~
13 ~~acupuncture~~];

14 (7) establish the requirements for a tutorial program
15 for acupuncture students who have completed at least 48 semester
16 hours of college; and

17 (8) recommend additional rules as are necessary to
18 administer and enforce this chapter.

19 (b) The acupuncture board does not have independent
20 rulemaking authority. A rule adopted by the acupuncture board is
21 subject to medical board approval.

22 (c) The acupuncture board shall:

23 (1) review and approve or reject each application for
24 the issuance or renewal of a license;

25 (2) issue each license; and

26 (3) deny, suspend, or revoke a license or otherwise
27 discipline a license holder.

1 SECTION 3.07. Subchapter C, Chapter 205, Occupations Code,
2 is amended by adding Section 205.1041 to read as follows:

3 Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN
4 RULEMAKING PROCESS. (a) The acupuncture board shall develop
5 guidelines to establish procedures for receiving input during the
6 rulemaking process from individuals and groups that have an
7 interest in matters under the acupuncture board's jurisdiction.
8 The guidelines must provide an opportunity for those individuals
9 and groups to provide input before the acupuncture board submits
10 the rule to the medical board for approval.

11 (b) A rule adopted by the acupuncture board may not be
12 challenged on the grounds that the board did not comply with this
13 section. If the acupuncture board was unable to solicit a
14 significant amount of input from the public or affected persons
15 early in the rulemaking process, the board shall state in writing
16 the reasons why the board was unable to do so.

17 SECTION 3.08. Subchapter C, Chapter 205, Occupations Code,
18 is amended by adding Section 205.1045 to read as follows:

19 Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL
20 CONVICTION. The acupuncture board shall adopt rules and guidelines
21 as necessary to comply with Chapter 53, except to the extent the
22 requirements of this chapter are stricter than the requirements of
23 Chapter 53.

24 SECTION 3.09. Subchapter C, Chapter 205, Occupations Code,
25 is amended by adding Section 205.106 to read as follows:

26 Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and
27 approval of the medical board, the acupuncture board shall

1 implement a policy requiring the acupuncture board to use
2 appropriate technological solutions to improve the acupuncture
3 board's ability to perform its functions. The policy must ensure
4 that the public is able to interact with the acupuncture board on
5 the Internet.

6 SECTION 3.10. Subchapter C, Chapter 205, Occupations Code,
7 is amended by adding Section 205.107 to read as follows:

8 Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE
9 DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval
10 of the medical board, the acupuncture board shall develop and
11 implement a policy to encourage the use of:

12 (1) negotiated rulemaking procedures under Chapter
13 2008, Government Code, for the adoption of acupuncture board rules;
14 and

15 (2) appropriate alternative dispute resolution
16 procedures under Chapter 2009, Government Code, to assist in the
17 resolution of internal and external disputes under the acupuncture
18 board's jurisdiction.

19 (b) The acupuncture board procedures relating to
20 alternative dispute resolution must conform, to the extent
21 possible, to any model guidelines issued by the State Office of
22 Administrative Hearings for the use of alternative dispute
23 resolution by state agencies.

24 (c) The acupuncture board shall designate a trained person
25 to:

26 (1) coordinate the implementation of the policy
27 adopted under Subsection (a);

1 (2) serve as a resource for any training needed to
2 implement the procedures for negotiated rulemaking or alternative
3 dispute resolution; and

4 (3) collect data concerning the effectiveness of those
5 procedures, as implemented by the acupuncture board.

6 SECTION 3.11. Subchapter D, Chapter 205, Occupations Code,
7 is amended by adding Section 205.1521 to read as follows:

8 Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture
9 board shall complete a preliminary investigation of a complaint
10 received by the acupuncture board not later than the 30th day after
11 the date of receiving the complaint. The acupuncture board shall
12 first determine whether the acupuncturist constitutes a continuing
13 threat to the public welfare. On completion of the preliminary
14 investigation, the acupuncture board shall determine whether to
15 officially proceed on the complaint. If the acupuncture board
16 fails to complete the preliminary investigation in the time
17 required by this section, the acupuncture board's official
18 investigation of the complaint is considered to commence on that
19 date.

20 SECTION 3.12. Section 205.201, Occupations Code, is amended
21 to read as follows:

22 Sec. 205.201. LICENSE REQUIRED. Except as provided by
23 Section 205.303, a person may not practice acupuncture in this
24 state unless the person holds a license to practice acupuncture
25 issued by the acupuncture [~~medical~~] board under this chapter.

26 SECTION 3.13. Section 205.202, Occupations Code, is amended
27 to read as follows:

1 Sec. 205.202. ISSUANCE OF LICENSE. (a) The [~~After~~
2 ~~consulting the~~] acupuncture board[, ~~the medical board~~] shall issue
3 a license to practice acupuncture in this state to a person who
4 meets the requirements of this chapter and the rules adopted under
5 this chapter.

6 (b) The acupuncture board may delegate authority to medical
7 board employees to issue licenses under this chapter to applicants
8 who clearly meet all licensing requirements. If the medical board
9 employees determine that the applicant does not clearly meet all
10 licensing requirements, the application shall be returned to the
11 acupuncture board. A license issued under this subsection does not
12 require formal acupuncture board approval.

13 SECTION 3.14. Section 205.203, Occupations Code, is amended
14 by amending Subsections (a) and (c) and adding Subsections (c-1)
15 and (f) to read as follows:

16 (a) An applicant for a license to practice acupuncture must
17 pass an acupuncture examination and a jurisprudence examination
18 approved by the acupuncture board as provided by this section.

19 (c) The acupuncture examination shall be conducted on
20 practical and theoretical acupuncture and other subjects required
21 by the acupuncture board.

22 (c-1) The jurisprudence examination shall be conducted on
23 the licensing requirements and other laws, rules, or regulations
24 applicable to the professional practice of acupuncture in this
25 state.

26 (f) The acupuncture board shall adopt rules for the
27 jurisprudence examination under Subsection (c-1) regarding:

- 1 (1) the development of the examination;
- 2 (2) applicable fees;
- 3 (3) administration of the examination;
- 4 (4) reexamination procedures;
- 5 (5) grading procedures; and
- 6 (6) notice of results.

7 SECTION 3.15. Section 205.206, Occupations Code, is amended
8 by adding Subsections (c) and (d) to read as follows:

9 (c) In addition to the other requirements of this section,
10 an acupuncture school or degree program is subject to approval by
11 the Texas Higher Education Coordinating Board unless the school or
12 program qualifies for an exemption under Section 61.303, Education
13 Code.

14 (d) In reviewing an acupuncture school or degree program as
15 required by Subsection (c), the Texas Higher Education Coordinating
16 Board shall seek input from the acupuncture board regarding the
17 standards to be used for assessing whether a school or degree
18 program adequately prepares an individual for the practice of
19 acupuncture.

20 SECTION 3.16. Section 205.255, Occupations Code, is amended
21 by adding Subsections (a-1) and (c) to read as follows:

22 (a-1) The acupuncture board shall establish written
23 guidelines for granting continuing education credit that specify:

- 24 (1) procedural requirements;
- 25 (2) the qualifications needed to be considered a
26 preferred provider of continuing education; and
- 27 (3) course content requirements.

1 (c) After guidelines are established under Subsection
2 (a-1), the acupuncture board shall delegate to medical board
3 employees the authority to approve course applications for courses
4 that clearly meet the guidelines. Medical board employees shall
5 refer any courses that are not clearly within the guidelines to the
6 acupuncture board for review and approval.

7 SECTION 3.17. Subsections (b) and (c), Section 205.351,
8 Occupations Code, are amended to read as follows:

9 (b) If the acupuncture [~~medical~~] board proposes to suspend,
10 revoke, or refuse to renew a person's license, the person is
11 entitled to a hearing conducted by the State Office of
12 Administrative Hearings.

13 (c) A complaint, indictment, or conviction of a violation of
14 law is not necessary for an action under Subsection (a)(11). Proof
15 of the commission of the act while in the practice of acupuncture or
16 under the guise of the practice of acupuncture is sufficient for
17 action by the acupuncture [~~medical~~] board.

18 SECTION 3.18. Section 205.352, Occupations Code, is amended
19 to read as follows:

20 Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD.

21 (a) On finding that grounds exist to deny a license or take
22 disciplinary action against a license holder, the acupuncture board
23 by order may:

24 (1) deny the person's application for a license,
25 license renewal, or certificate to practice acupuncture or revoke
26 the person's license or certificate to practice acupuncture;

27 (2) require the person to submit to the care,

1 counseling, or treatment of a health care practitioner designated
2 by the acupuncture board as a condition for the issuance,
3 continuance, or renewal of a license or certificate to practice
4 acupuncture;

5 (3) require the person to participate in a program of
6 education or counseling prescribed by the acupuncture board;

7 (4) suspend, limit, or restrict the person's license
8 or certificate to practice acupuncture, including limiting the
9 practice of the person to, or excluding from the practice, one or
10 more specified activities of acupuncture or stipulating periodic
11 review by the acupuncture board;

12 (5) require the person to practice under the direction
13 of an acupuncturist designated by the acupuncture board for a
14 specified period of time;

15 (6) assess an administrative penalty against the
16 person as provided by Subchapter J [~~Chapter 165~~];

17 (7) require the person to perform public service
18 considered appropriate by the acupuncture board; [~~or~~]

19 (8) stay enforcement of an order and place the person
20 on probation with the acupuncture board retaining the right to
21 vacate the probationary stay and enforce the original order for
22 noncompliance with the terms of probation or impose any other
23 remedial measure or sanction authorized by this section;

24 (9) require the person to continue or review
25 professional education until the person attains a degree of skill
26 satisfactory to the acupuncture board in those areas that are the
27 basis of the probation under Subdivision (8);

1 (10) require the person to report regularly to the
2 acupuncture board on matters that are the basis of the probation
3 under Subdivision (8); or

4 (11) administer a public reprimand.

5 (b) The acupuncture board may reinstate or reissue a license
6 or remove any disciplinary or corrective measure that the
7 acupuncture board has imposed under this section.

8 SECTION 3.19. Subchapter H, Chapter 205, Occupations Code,
9 is amended by adding Section 205.3522 to read as follows:

10 Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture
11 board may accept the voluntary surrender of a license.

12 (b) A surrendered license may not be returned to the license
13 holder unless the acupuncture board determines, under acupuncture
14 board rules, that the former holder of the license is competent to
15 resume practice.

16 (c) The acupuncture board shall recommend rules to the
17 medical board for determining the competency of a former license
18 holder to return to practice.

19 SECTION 3.20. Subchapter H, Chapter 205, Occupations Code,
20 is amended by adding Section 205.3523 to read as follows:

21 Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The
22 acupuncture board shall adopt guidelines, in conjunction with
23 persons interested in or affected by this section, to enable the
24 board to evaluate circumstances in which an acupuncturist or
25 applicant may be required to submit to an examination for mental or
26 physical health conditions, alcohol and substance abuse, or
27 professional behavior problems.

1 (b) The acupuncture board shall refer an acupuncturist or
2 applicant with a physical or mental health condition to the most
3 appropriate medical specialist. The acupuncture board may not
4 require an acupuncturist or applicant to submit to an examination
5 by a physician having a specialty specified by the board unless
6 medically indicated. The acupuncture board may not require an
7 acupuncturist or applicant to submit to an examination to be
8 conducted an unreasonable distance from the person's home or place
9 of business unless the acupuncturist or applicant resides and works
10 in an area in which there are a limited number of physicians able to
11 perform an appropriate examination.

12 (c) The guidelines adopted under this section do not impair
13 or remove the acupuncture board's power to make an independent
14 licensing decision.

15 SECTION 3.21. Subchapter H, Chapter 205, Occupations Code,
16 is amended by adding Section 205.3541 to read as follows:

17 Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture
18 board by rule shall adopt procedures governing:

19 (1) informal disposition of a contested case under
20 Section 2001.056, Government Code; and

21 (2) informal proceedings held in compliance with
22 Section 2001.054, Government Code.

23 (b) Rules adopted under this section must require that:

24 (1) an informal meeting in compliance with Section
25 2001.054, Government Code, be scheduled not later than the 180th
26 day after the date the complaint is filed with the acupuncture
27 board, unless good cause is shown by the acupuncture board for

1 scheduling the informal meeting after that date;

2 (2) the acupuncture board give notice to the license
3 holder of the time and place of the meeting not later than the 30th
4 day before the date the meeting is held;

5 (3) the complainant and the license holder be provided
6 an opportunity to be heard;

7 (4) at least one of the acupuncture board members
8 participating in the informal meeting as a panelist be a member who
9 represents the public;

10 (5) the acupuncture board's legal counsel or a
11 representative of the attorney general be present to advise the
12 acupuncture board or the medical board's staff; and

13 (6) an employee of the medical board be at the meeting
14 to present to the acupuncture board's representative the facts the
15 medical board staff reasonably believes it could prove by competent
16 evidence or qualified witnesses at a hearing.

17 (c) An affected acupuncturist is entitled, orally or in
18 writing, to:

19 (1) reply to the staff's presentation; and

20 (2) present the facts the acupuncturist reasonably
21 believes the acupuncturist could prove by competent evidence or
22 qualified witnesses at a hearing.

23 (d) After ample time is given for the presentations, the
24 acupuncture board panel shall recommend that the investigation be
25 closed or shall attempt to mediate the disputed matters and make a
26 recommendation regarding the disposition of the case in the absence
27 of a hearing under applicable law concerning contested cases.

1 (e) If the license holder has previously been the subject of
2 disciplinary action by the acupuncture board, the acupuncture board
3 shall schedule the informal meeting as soon as practicable but not
4 later than the deadline prescribed by Subsection (b)(1).

5 SECTION 3.22. Subchapter H, Chapter 205, Occupations Code,
6 is amended by adding Section 205.3542 to read as follows:

7 Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN
8 INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section
9 205.3541, at least two panelists shall be appointed to determine
10 whether an informal disposition is appropriate.

11 (b) Notwithstanding Subsection (a) and Section
12 205.3541(b)(4), an informal proceeding may be conducted by one
13 panelist if the affected acupuncturist waives the requirement that
14 at least two panelists conduct the informal proceeding. If the
15 acupuncturist waives that requirement, the panelist may be any
16 member of the acupuncture board.

17 (c) The panel requirements described by Subsection (a)
18 apply to an informal proceeding conducted by the acupuncture board
19 under Section 205.3541, including a proceeding to:

20 (1) consider a disciplinary case to determine if a
21 violation has occurred; or

22 (2) request modification or termination of an order.

23 (d) The panel requirements described by Subsection (a) do
24 not apply to an informal proceeding conducted by the acupuncture
25 board under Section 205.3541 to show compliance with an order of the
26 acupuncture board.

27 SECTION 3.23. Subchapter H, Chapter 205, Occupations Code,

1 is amended by adding Section 205.3543 to read as follows:

2 Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS
3 IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that
4 serves as a panelist at an informal meeting under Section 205.3541
5 shall make recommendations for the disposition of a complaint or
6 allegation. The member may request the assistance of a medical
7 board employee at any time.

8 (b) Medical board employees shall present a summary of the
9 allegations against the affected acupuncturist and of the facts
10 pertaining to the allegation that the employees reasonably believe
11 may be proven by competent evidence at a formal hearing.

12 (c) An acupuncture board or medical board attorney shall act
13 as counsel to the panel and, notwithstanding Subsection (e), shall
14 be present during the informal meeting and the panel's
15 deliberations to advise the panel on legal issues that arise during
16 the proceeding. The attorney may ask questions of participants in
17 the informal meeting to clarify any statement made by the
18 participant. The attorney shall provide to the panel a historical
19 perspective on comparable cases that have appeared before the
20 acupuncture board or medical board, keep the proceedings focused on
21 the case being discussed, and ensure that the medical board's
22 employees and the affected acupuncturist have an opportunity to
23 present information related to the case. During the panel's
24 deliberation, the attorney may be present only to advise the panel
25 on legal issues and to provide information on comparable cases that
26 have appeared before the acupuncture board or medical board.

27 (d) The panel and medical board employees shall provide an

1 opportunity for the affected acupuncturist and the acupuncturist's
2 authorized representative to reply to the board employees'
3 presentation and to present oral and written statements and facts
4 that the acupuncturist and representative reasonably believe could
5 be proven by competent evidence at a formal hearing.

6 (e) An employee of the medical board who participated in the
7 presentation of the allegation or information gathered in the
8 investigation of the complaint, the affected acupuncturist, the
9 acupuncturist's authorized representative, the complainant, the
10 witnesses, and members of the public may not be present during the
11 deliberations of the panel. Only the members of the panel and the
12 attorney serving as counsel to the panel may be present during the
13 deliberations.

14 (f) The panel shall recommend the dismissal of the complaint
15 or allegations or, if the panel determines that the affected
16 acupuncturist has violated a statute or acupuncture board rule, the
17 panel may recommend board action and terms for an informal
18 settlement of the case.

19 (g) The panel's recommendations under Subsection (f) must
20 be made in a written order and presented to the affected
21 acupuncturist and the acupuncturist's authorized representative.
22 The acupuncturist may accept the proposed settlement within the
23 time established by the panel at the informal meeting. If the
24 acupuncturist rejects the proposed settlement or does not act
25 within the required time, the acupuncture board may proceed with
26 the filing of a formal complaint with the State Office of
27 Administrative Hearings.

1 SECTION 3.24. Subchapter H, Chapter 205, Occupations Code,
2 is amended by adding Section 205.3544 to read as follows:

3 Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The
4 acupuncture board shall prohibit or limit access to an
5 investigation file relating to a license holder in an informal
6 proceeding in the manner provided by Section 164.007(c).

7 SECTION 3.25. Section 205.356, Occupations Code, is amended
8 to read as follows:

9 Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture
10 board, through an agreed order or after a contested proceeding, may
11 impose a nondisciplinary rehabilitation order on an applicant, as a
12 prerequisite for issuing a license, or on a license holder based on:

13 (1) the person's intemperate use of drugs or alcohol
14 directly resulting from habituation or addiction caused by medical
15 care or treatment provided by a physician;

16 (2) the person's intemperate use of drugs or alcohol
17 during the five years preceding the date of the report that could
18 adversely affect the person's ability to safely practice as an
19 acupuncturist, if the person:

20 (A) reported the use; ~~and~~

21 (B) has not previously been the subject of a
22 substance abuse related order of the acupuncture board; and

23 (C) did not violate the standard of care as a
24 result of the impairment;

25 (3) a judgment by a court that the person is of unsound
26 mind; or

27 (4) the results of a mental or physical examination,

1 or an admission by the person, indicating that the person suffers
2 from a potentially dangerous limitation or an inability to practice
3 as an acupuncturist with reasonable skill and safety by reason of
4 illness or as a result of any physical or mental condition.

5 (b) The acupuncture board may not issue an order under this
6 section if, before the individual signs the proposed order, the
7 board receives a valid complaint with regard to the individual
8 based on the individual's intemperate use of drugs or alcohol in a
9 manner affecting the standard of care.

10 (c) The acupuncture board must determine whether an
11 individual has committed a standard of care violation described by
12 Subsection (a)(2) before imposing an order under this section.

13 (d) The acupuncture board may disclose a rehabilitation
14 order to a local or statewide private acupuncture association only
15 as provided by Section 205.3562.

16 SECTION 3.26. Subchapter H, Chapter 205, Occupations Code,
17 is amended by adding Sections 205.3561 and 205.3562 to read as
18 follows:

19 Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the
20 acupuncture board is immune from suit and judgment and may not be
21 subjected to a suit for damages for any investigation, report,
22 recommendation, statement, evaluation, finding, or other action
23 taken without fraud or malice in the course of assisting the board
24 in a disciplinary proceeding. The attorney general shall represent
25 the expert in any suit resulting from a service provided by the
26 expert in good faith to the acupuncture board.

27 Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

1 (a) If a rehabilitation order imposed under Section 205.356
2 requires a license holder to participate in activities or programs
3 provided by a local or statewide private acupuncture association,
4 the acupuncture board shall inform the association of the license
5 holder's duties under the order. The information provided under
6 this section must include specific guidance to enable the
7 association to comply with any requirements necessary to assist in
8 the acupuncturist's rehabilitation.

9 (b) The acupuncture board may provide to the association any
10 information that the board determines to be necessary, including a
11 copy of the rehabilitation order. Any information received by the
12 association remains confidential, is not subject to discovery,
13 subpoena, or other means of legal compulsion, and may be disclosed
14 only to the acupuncture board.

15 SECTION 3.27. Subchapter H, Chapter 205, Occupations Code,
16 is amended by adding Section 205.360 to read as follows:

17 Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT
18 DISPOSITIONS. (a) The acupuncture board may delegate to a
19 committee of medical board employees the authority to dismiss or
20 enter into an agreed settlement of a complaint that does not relate
21 directly to patient care or that involves only administrative
22 violations. The disposition determined by the committee must be
23 approved by the acupuncture board at a public meeting.

24 (b) A complaint delegated under this section shall be
25 referred for informal proceedings under Section 205.3541 if:

26 (1) the committee of employees determines that the
27 complaint should not be dismissed or settled;

1 (2) the committee is unable to reach an agreed
2 settlement; or

3 (3) the affected acupuncturist requests that the
4 complaint be referred for informal proceedings.

5 SECTION 3.28. Subchapter H, Chapter 205, Occupations Code,
6 is amended by adding Section 205.361 to read as follows:

7 Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding
8 officer of the acupuncture board, with that board's approval, shall
9 appoint a three-member disciplinary panel consisting of
10 acupuncture board members to determine whether a person's license
11 to practice as an acupuncturist should be temporarily suspended.

12 (b) If the disciplinary panel determines from the
13 information presented to the panel that a person licensed to
14 practice as an acupuncturist would, by the person's continuation in
15 practice, constitute a continuing threat to the public welfare, the
16 disciplinary panel shall temporarily suspend the license of that
17 person.

18 (c) A license may be suspended under this section without
19 notice or hearing on the complaint if:

20 (1) institution of proceedings for a hearing before
21 the acupuncture board is initiated simultaneously with the
22 temporary suspension; and

23 (2) a hearing is held under Chapter 2001, Government
24 Code, and this chapter as soon as possible.

25 (d) Notwithstanding Chapter 551, Government Code, the
26 disciplinary panel may hold a meeting by telephone conference call
27 if immediate action is required and convening of the panel at one

1 location is inconvenient for any member of the disciplinary panel.

2 SECTION 3.29. Subchapter H, Chapter 205, Occupations Code,
3 is amended by adding Section 205.362 to read as follows:

4 Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to
5 the acupuncture board that a person who is not licensed under this
6 chapter is violating this chapter, a rule adopted under this
7 chapter, or another state statute or rule relating to the practice
8 of acupuncture, the board, after notice and opportunity for a
9 hearing, may issue a cease and desist order prohibiting the person
10 from engaging in the activity.

11 (b) A violation of an order under this section constitutes
12 grounds for imposing an administrative penalty under Section
13 205.352.

14 SECTION 3.30. Subchapter H, Chapter 205, Occupations Code,
15 is amended by adding Section 205.363 to read as follows:

16 Sec. 205.363. REFUND. (a) Subject to Subsection (b), the
17 acupuncture board may order a license holder to pay a refund to a
18 consumer as provided in an agreement resulting from an informal
19 settlement conference instead of or in addition to imposing an
20 administrative penalty under this subchapter.

21 (b) The amount of a refund ordered under Subsection (a) may
22 not exceed the amount the consumer paid to the license holder for a
23 service regulated by this chapter. The acupuncture board may not
24 require payment of other damages or estimate harm in a refund order.

25 SECTION 3.31. Subchapter H, Chapter 205, Occupations Code,
26 is amended by adding Section 205.364 to read as follows:

27 Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY

1 ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a
2 finding of fact or conclusion of law or vacate or modify an order of
3 an administrative law judge only if the acupuncture board makes a
4 determination required by Section 2001.058(e), Government Code.

5 SECTION 3.32. Subsections (a) and (d), Section 205.402,
6 Occupations Code, are amended to read as follows:

7 (a) The acupuncture [~~medical~~] board, the attorney general,
8 or a district or county attorney may bring a civil action to compel
9 compliance with this chapter or to enforce a rule adopted under this
10 chapter.

11 (d) The attorney general, at the request of the acupuncture
12 [~~medical~~] board or on the attorney general's own initiative, may
13 bring a civil action to collect a civil penalty.

14 SECTION 3.33. The heading to Subchapter I, Chapter 205,
15 Occupations Code, is amended to read as follows:

16 SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

17 SECTION 3.34. Chapter 205, Occupations Code, is amended by
18 adding Subchapter J to read as follows:

19 SUBCHAPTER J. ADMINISTRATIVE PENALTIES

20 Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The
21 acupuncture board by order may impose an administrative penalty
22 against a person licensed or regulated under this chapter who
23 violates this chapter or a rule or order adopted under this chapter.

24 Sec. 205.452. PROCEDURE. (a) The acupuncture board by
25 rule shall prescribe the procedure by which it may impose an
26 administrative penalty.

27 (b) A proceeding under this subchapter is subject to Chapter

1 2001, Government Code.

2 Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an
3 administrative penalty may not exceed \$5,000 for each violation.
4 Each day a violation continues or occurs is a separate violation for
5 purposes of imposing a penalty.

6 (b) The amount of the penalty shall be based on:

7 (1) the seriousness of the violation, including:

8 (A) the nature, circumstances, extent, and
9 gravity of any prohibited act; and

10 (B) the hazard or potential hazard created to the
11 health, safety, or economic welfare of the public;

12 (2) the economic harm to property or the environment
13 caused by the violation;

14 (3) the history of previous violations;

15 (4) the amount necessary to deter a future violation;

16 (5) efforts to correct the violation; and

17 (6) any other matter that justice may require.

18 Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the
19 acupuncture board by order determines that a violation has occurred
20 and imposes an administrative penalty, the acupuncture board shall
21 notify the affected person of the board's order.

22 (b) The notice must include a statement of the right of the
23 person to judicial review of the order.

24 Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

25 (a) Not later than the 30th day after the date the acupuncture
26 board's order imposing the administrative penalty is final, the
27 person shall:

1 (1) pay the penalty;

2 (2) pay the penalty and file a petition for judicial
3 review contesting the occurrence of the violation, the amount of
4 the penalty, or both; or

5 (3) without paying the penalty, file a petition for
6 judicial review contesting the occurrence of the violation, the
7 amount of the penalty, or both.

8 (b) Within the 30-day period, a person who acts under
9 Subsection (a)(3) may:

10 (1) stay enforcement of the penalty by:

11 (A) paying the penalty to the court for placement
12 in an escrow account; or

13 (B) giving to the court a supersedeas bond
14 approved by the court for the amount of the penalty and that is
15 effective until all judicial review of the acupuncture board's
16 order is final; or

17 (2) request the court to stay enforcement of the
18 penalty by:

19 (A) filing with the court an affidavit of the
20 person stating that the person is financially unable to pay the
21 penalty and is financially unable to give the supersedeas bond; and

22 (B) giving a copy of the affidavit to the
23 presiding officer of the acupuncture board by certified mail.

24 (c) If the presiding officer of the acupuncture board
25 receives a copy of an affidavit under Subsection (b)(2), the
26 presiding officer may file with the court a contest to the affidavit
27 not later than the fifth day after the date the copy is received.

1 (d) The court shall hold a hearing on the facts alleged in
2 the affidavit as soon as practicable and shall stay the enforcement
3 of the penalty on finding that the alleged facts are true. The
4 person who files an affidavit has the burden of proving that the
5 person is financially unable to pay the penalty and to give a
6 supersedeas bond.

7 Sec. 205.456. COLLECTION OF PENALTY. If the person does not
8 pay the administrative penalty and the enforcement of the penalty
9 is not stayed, the presiding officer of the acupuncture board may
10 refer the matter to the attorney general for collection of the
11 penalty.

12 Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal
13 the court sustains the determination that a violation occurred, the
14 court may uphold or reduce the amount of the administrative penalty
15 and order the person to pay the full or reduced penalty.

16 (b) If the court does not sustain the determination that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

19 Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If
20 after judicial review the administrative penalty is reduced or not
21 imposed by the court, the court shall, after the judgment becomes
22 final:

23 (1) order that the appropriate amount, plus accrued
24 interest, be remitted to the person if the person paid the penalty;
25 or

26 (2) order the release of the bond in full if the
27 penalty is not imposed or order the release of the bond after the

1 person pays the penalty imposed if the person posted a supersedeas
2 bond.

3 (b) The interest paid under Subsection (a)(1) is the rate
4 charged on loans to depository institutions by the New York Federal
5 Reserve Bank. The interest is paid for the period beginning on the
6 date the penalty is paid and ending on the date the penalty is
7 remitted.

8 SECTION 3.35. Sections 205.002 and 205.353, Occupations
9 Code, are repealed.

10 SECTION 3.36. (a) Not later than January 1, 2006, the
11 Texas State Board of Acupuncture Examiners shall:

12 (1) adopt the policies required by Sections 205.106
13 and 205.107, Occupations Code, as added by this article; and

14 (2) adopt the rules required by Chapter 205,
15 Occupations Code, as amended by this article.

16 (b) Not later than March 1, 2006, the Texas State Board of
17 Acupuncture Examiners shall develop the jurisprudence examination
18 required by Section 205.203, Occupations Code, as amended by this
19 article.

20 (c) The requirement to pass a jurisprudence examination
21 under Section 205.203, Occupations Code, as amended by this
22 article, applies only to an individual who applies for a license as
23 an acupuncturist on or after September 1, 2006.

24 SECTION 3.37. (a) The changes in law made by Sections
25 205.053 and 205.057, Occupations Code, as amended by this article,
26 regarding the prohibitions on or qualifications of members of the
27 Texas State Board of Acupuncture Examiners do not affect the

1 entitlement of a member serving on the board immediately before
2 September 1, 2005, to continue to serve and function as a member of
3 the board for the remainder of the member's term. The changes in
4 law made by those sections apply only to a member appointed on or
5 after September 1, 2005.

6 (b) The changes in law made by this article related to the
7 filing, investigation, or resolution of a complaint under Chapter
8 205, Occupations Code, as amended by this article, apply only to a
9 complaint filed with the Texas State Board of Acupuncture Examiners
10 on or after the effective date of this Act. A complaint filed
11 before the effective date of this Act is governed by the law as it
12 existed immediately before that date, and the former law is
13 continued in effect for that purpose.

14 (c) The changes in law made by this article governing the
15 authority of the Texas State Board of Acupuncture Examiners to
16 issue, renew, or revoke a license under Chapter 205, Occupations
17 Code, apply only to an application for a license filed with the
18 Texas State Board of Acupuncture Examiners under Chapter 205,
19 Occupations Code, as amended by this article, on or after the
20 effective date of this Act. A license application filed before the
21 effective date of this Act is governed by the law in effect at the
22 time the application was filed, and the former law is continued in
23 effect for that purpose.

24 (d) The change in law made by this article with respect to
25 conduct that is grounds for imposition of a disciplinary sanction,
26 including a refund, temporary license suspension, or cease and
27 desist order, applies only to conduct that occurs on or after the

1 effective date of this Act. Conduct that occurs before the
2 effective date of this Act is governed by the law in effect on the
3 date the conduct occurred, and the former law is continued in effect
4 for that purpose.

5 ARTICLE 4. REGULATION OF SURGICAL ASSISTANTS

6 SECTION 4.01. Subdivision (5), Section 206.001,
7 Occupations Code, is amended to read as follows:

8 (5) "Medical board" means the Texas [~~State Board of~~
9 Medical Board ~~Examiners~~].

10 SECTION 4.02. Subchapter D, Chapter 206, Occupations Code,
11 is amended by adding Section 206.1575 to read as follows:

12 Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board
13 shall complete a preliminary investigation of a complaint not later
14 than the 30th day after the date of receiving the complaint. The
15 medical board shall first determine whether the surgical assistant
16 constitutes a continuing threat to the public welfare. On
17 completion of the preliminary investigation, the medical board
18 shall determine whether to officially proceed on the complaint. If
19 the medical board fails to complete the preliminary investigation
20 in the time required by this section, the medical board's official
21 investigation is considered to commence on that date.

22 SECTION 4.03. Section 206.209, Occupations Code, is amended
23 to read as follows:

24 Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The
25 medical board shall issue a surgical assistant license in this
26 state to a person who meets the requirements of this chapter and the
27 rules adopted under this chapter.

1 (b) The medical board may delegate authority to board
2 employees to issue licenses under this chapter to applicants who
3 clearly meet all licensing requirements. If the medical board
4 employees determine that the applicant does not clearly meet all
5 licensing requirements, the application shall be returned to the
6 medical board. A license issued under this subsection does not
7 require formal medical board approval.

8 SECTION 4.04. Section 206.305, Occupations Code, is amended
9 to read as follows:

10 Sec. 206.305. REHABILITATION ORDER. (a) The medical
11 board, through an agreed order or after a contested case
12 proceeding, may impose a rehabilitation order on an applicant, as a
13 prerequisite for issuing a license, or on a license holder based on:

14 (1) the person's intemperate use of drugs or alcohol
15 directly resulting from habituation or addiction caused by medical
16 care or treatment provided by a physician;

17 (2) the person's intemperate use of drugs or alcohol
18 during the five years preceding the date of the report that could
19 adversely affect the person's ability to safely practice as a
20 surgical assistant, if the person:

21 (A) reported the use; ~~and~~

22 (B) has not previously been the subject of a
23 substance abuse related order of the medical board; and

24 (C) has not committed a violation of the standard
25 of care as a result of the intemperate use of drugs or alcohol;

26 (3) a judgment by a court that the person is of unsound
27 mind; or

1 (4) the results of a mental or physical examination,
2 or an admission by the person, indicating that the person suffers
3 from a potentially dangerous limitation or an inability to practice
4 as a surgical assistant with reasonable skill and safety because of
5 illness or any other physical or mental condition.

6 (b) The medical board may not issue an order under this
7 section if, before the individual signs the proposed order, the
8 board receives a valid complaint with regard to the individual
9 based on the individual's intemperate use of drugs or alcohol in a
10 manner affecting the standard of care.

11 (c) The medical board must determine whether an individual
12 has committed a standard of care violation described by Subsection
13 (a)(2) before imposing an order under this section.

14 (d) The medical board may disclose a rehabilitation order to
15 a local or statewide private medical or surgical assistant
16 association only as provided by Section 206.3075.

17 SECTION 4.05. Subchapter G, Chapter 206, Occupations Code,
18 is amended by adding Section 206.3075 to read as follows:

19 Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS.

20 (a) If a rehabilitation order imposed under Section 206.305
21 requires a license holder to participate in activities or programs
22 provided by a local or statewide private medical or surgical
23 assistant association, the medical board shall inform the
24 association of the license holder's duties under the order. The
25 information provided under this section must include specific
26 guidance to enable the association to comply with any requirements
27 necessary to assist in the surgical assistant's rehabilitation.

1 (b) The medical board may provide to the association any
2 information that the board determines to be necessary, including a
3 copy of the rehabilitation order. Any information received by the
4 association remains confidential, is not subject to discovery,
5 subpoena, or other means of legal compulsion, and may be disclosed
6 only to the medical board.

7 SECTION 4.06. Subchapter G, Chapter 206, Occupations Code,
8 is amended by adding Sections 206.313, 206.314, and 206.315 to read
9 as follows:

10 Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board
11 by rule shall adopt procedures under this chapter governing:

12 (1) informal disposition of a contested case under
13 Section 2001.056, Government Code; and

14 (2) informal proceedings held in compliance with
15 Section 2001.054, Government Code.

16 (b) Rules adopted under this section must require that:

17 (1) an informal meeting in compliance with Section
18 2001.054, Government Code, be scheduled not later than the 180th
19 day after the date the medical board's official investigation of
20 the complaint is commenced, unless good cause is shown by the board
21 for scheduling the informal meeting after that date;

22 (2) the medical board give notice to the license
23 holder of the time and place of the meeting not later than the 30th
24 day before the date the meeting is held;

25 (3) the complainant and the license holder be provided
26 an opportunity to be heard;

27 (4) at least one of the medical board members or

1 district review committee members participating in the informal
2 meeting as a panelist be a member who represents the public;

3 (5) the medical board's legal counsel or a
4 representative of the attorney general be present to advise the
5 medical board or the board's staff; and

6 (6) a member of the medical board's staff be at the
7 meeting to present to the panel the facts the staff reasonably
8 believes it could prove by competent evidence or qualified
9 witnesses at a hearing.

10 (c) An affected surgical assistant is entitled, orally or in
11 writing, to:

12 (1) reply to the staff's presentation; and

13 (2) present the facts the surgical assistant
14 reasonably believes the surgical assistant could prove by competent
15 evidence or qualified witnesses at a hearing.

16 (d) After ample time is given for the presentations, the
17 medical board panel shall recommend that the investigation be
18 closed or shall attempt to mediate the disputed matters and make a
19 recommendation regarding the disposition of the case in the absence
20 of a hearing under applicable law concerning contested cases.

21 (e) If the license holder has previously been the subject of
22 disciplinary action by the medical board, the board shall schedule
23 the informal meeting as soon as practicable but not later than the
24 deadline prescribed by Subsection (b)(1).

25 Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN
26 INFORMAL PROCEEDINGS. (a) A medical board or district review
27 committee member that serves as a panelist at an informal meeting

1 under Section 206.313 shall make recommendations for the
2 disposition of a complaint or allegation. The member may request
3 the assistance of a medical board employee at any time.

4 (b) Medical board employees shall present a summary of the
5 allegations against the affected surgical assistant and of the
6 facts pertaining to the allegation that the employees reasonably
7 believe may be proven by competent evidence at a formal hearing.

8 (c) A medical board attorney shall act as counsel to the
9 panel and, notwithstanding Subsection (e), shall be present during
10 the informal meeting and the panel's deliberations to advise the
11 panel on legal issues that arise during the proceeding. The
12 attorney may ask questions of participants in the informal meeting
13 to clarify any statement made by the participant. The attorney
14 shall provide to the panel a historical perspective on comparable
15 cases that have appeared before the medical board, keep the
16 proceedings focused on the case being discussed, and ensure that
17 the medical board's employees and the affected surgical assistant
18 have an opportunity to present information related to the case.
19 During the panel's deliberations, the attorney may be present only
20 to advise the panel on legal issues and to provide information on
21 comparable cases that have appeared before the medical board.

22 (d) The panel and medical board employees shall provide an
23 opportunity for the affected surgical assistant and the surgical
24 assistant's authorized representative to reply to the board
25 employees' presentation and to present oral and written statements
26 and facts that the surgical assistant and representative reasonably
27 believe could be proven by competent evidence at a formal hearing.

1 (e) An employee of the medical board who participated in the
2 presentation of the allegation or information gathered in the
3 investigation of the complaint, the affected surgical assistant,
4 the surgical assistant's authorized representative, the
5 complainant, the witnesses, and members of the public may not be
6 present during the deliberations of the panel. Only the members of
7 the panel and the medical board attorney serving as counsel to the
8 panel may be present during the deliberations.

9 (f) The panel shall recommend the dismissal of the complaint
10 or allegations or, if the panel determines that the affected
11 surgical assistant has violated a statute or medical board rule,
12 the panel may recommend board action and terms for an informal
13 settlement of the case.

14 (g) The panel's recommendations under Subsection (f) must
15 be made in a written order and presented to the affected surgical
16 assistant and the surgical assistant's authorized representative.
17 The surgical assistant may accept the proposed settlement within
18 the time established by the panel at the informal meeting. If the
19 surgical assistant rejects the proposed settlement or does not act
20 within the required time, the medical board may proceed with the
21 filing of a formal complaint with the State Office of
22 Administrative Hearings.

23 Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL
24 PROCEEDINGS. (a) In an informal proceeding under Section 206.313,
25 at least two panelists shall be appointed to determine whether an
26 informal disposition is appropriate.

27 (b) The medical board may request members of a committee

1 under Chapter 163 to participate in an informal meeting under
2 Section 206.313.

3 (c) Notwithstanding Subsection (a) and Section
4 206.313(b)(4), an informal proceeding may be conducted by one
5 panelist if the affected surgical assistant waives the requirement
6 that at least two panelists conduct the informal proceeding. If the
7 surgical assistant waives that requirement, the panelist may be
8 either a physician or a member who represents the public.

9 (d) The panel requirements described by Subsection (a) do
10 not apply to an informal proceeding conducted by the medical board
11 under Section 206.313 to show compliance with an order of the board.

12 SECTION 4.07. The changes in law made by this article
13 related to the filing, investigation, or disposition of a complaint
14 under Chapter 206, Occupations Code, as amended by this article,
15 apply only to a complaint filed with the Texas Medical Board on or
16 after the effective date of this Act. A complaint filed before the
17 effective date of this Act is governed by the law as it existed
18 immediately before that date, and the former law is continued in
19 effect for that purpose.

20 ARTICLE 5. EFFECTIVE DATE

21 SECTION 5.01. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 419 passed the Senate on April 26, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 26, 2005, by the following vote: Yeas 23, Nays 7, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 419 passed the House, with amendments, on May 17, 2005, by the following vote: Yeas 121, Nays 12, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor